Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
13.	Fred P. Carr, 1000 Insurance Exchange Bldg., Des Moines, Iowa	3,000	45.00
14.	Bank of Cattaraugus, Cattaraugus, N. Y.	1,000	.....
15.	R. E. Crummer & Company, Chicago, Ill.	....	25,243.33
16.	W. P. Davis, 314 Equitable Bldg., Des Moines, Iowa	10,000	2,495.00
17.	Erwin R. Effler & LeRoy E. Eastman, Trustees U/W of Mary Sedate McCann, deceased, Toledo, Ohio	2,000	.....
18.	First National Bank of Monroe, Monroe, Mich.	3,000	1,365.00
19.	Oliver C. Foreman, 58 E. Washington St., 2018 Chicago, Ill.	5,000	.....
20.	Mrs. Dorothy B. Gossard, 6707 Colorado St., Overland Park, Kansas	10,000	4,350.00
21.	Julia D. Green, 171 W. 57th St., Shelton Island Heights, N. Y.	1,000	.....
22.	Edwin M. Hadley, Jr., 629 Kimball Rd., Highland Park, Ill.	5,000	.....
23.	A. S. Huyck & Company, 100 West Monroe St., Chicago, Ill.	10,000	.....
24.	Walter J. Krager, Cattaraugus, N. Y.	1,000	.....
25.	O. J. Kruger, 111 W. Fifth St., St. Paul, Minn.	5,000	75.00
26.	Henry F. Lankow, Little Valley, N. Y.	2,000	620.00
27.	Clifford Lathrop, First Natl. Bank Bldg., Wichita, Kansas	16,000	1,920.00
28.	Frank Lathrop, First Natl. Bank Bldg., Wichita, Kansas	10,000	1,350.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
29.	Life & Casualty Insurance Company of Tennessee, 159–4th Ave. N., Nashville, Tenn.	5,000	800.00
30.	Rene D. Mallett, Hendersonville, N. C.	1,000	100.00
31.	Prairie State Bank, Augusta, Kansas	18,000	1,170.00
32.	J. D. Puller, Thomas D. Green and W. J. Zalesky, Trustees of J. T. Dismukes, deceased. (Mr. Puller, St. Augustine, Fla.)	25,000	.....
33.	J. D. Puller, St. Augustine, Fla. ..	2,000	.....
34.	Howard Scott, Neodesha, Kan.....	1,000	420.00
35.	W. R. Stone, Bristol, Tenn.	5,000	.....
36.	Security Benefit Association, Topeka, Kansas	38,000	5,130.00
37.	Susan Sheaff, Holcomb, Ill.	4,000	160.00
38.	C. L. Swan, Erie, Kansas	5,000	1,200.00
39.	Emma Thornton, Coldwater, Kansas	5,000	375.00
40.	Nellie R. Yeasting, 2817 Powhattan Parkway, Toledo, Ohio	5,000	.....
41.	Elizabeth D. Zalesky, c/o National Savings & Trust Co., Washington, D. C.	1,000	.....
42.	Lawrence Leirman, Winfield, Kansas	7,000	315.00
43.	Carl A. Morawitz, Wichita, Kansas	2,000	780.00
44.	Curtis C. Coxe, as Agent for Trustees of assets of former People's Bank for Savings, St. Augustine, Fla.	8,000	3,680.00
45.	R. E. Crummer & Co., Chicago, Ill.	10,000	450.00
46.	The Brown-Crummer Investment Co., Wichita, Kansas ..... (Claim #46 covered by judgments.)	24,000	58,535.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
47.	R. E. Crummer & Company, Chicago, Ill. ..... (Claim #47 covered by judgments.)	.....	2,460.00
48.	The Security Benefit Assn., Topeka, Kansas ..... (Claim #48 covered by judgments.) Claim #46 is passed for time being until claimant files assignments of mortgages attached thereto.	.....	11,400.00
49.	Aid Association for Lutherans, Appleton, Wis.	5,000	2,300.00
50.	Margaretha Vogt, Box 753, Avon Park, Fla.	1,000	.....
51.	F. R. Messenger, 300 N. Terrace Drive, Wichita, Kan.	9,000	4,140.00
52.	R. E. Crummer & Company, Chicago, Ill.	95,000	14,168.33
53.	R. E. Crummer & Company, Chicago, Ill.	1,000	1,540.00
54.	Brown-Crummer Investment Co., Wichita, Kansas	146,000	35,774.17
55.	F. C. Swinburne, Box 22, Clearwater, Fla.	5,000	2,095.00
56.	Roger W. Babson, by Touchton & Crittenden, Attys., Winter Haven, Fla. ..... (Claim #56 covered by judgment)	.....	.....
57.	William E. Sweet, Denver, Colo... (Claim #57 covered by judgment)	11,000	1,155.00
58.	The American United Life Insurance Co., Indianapolis, Ind.	35,000	4,550.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
59.	American United Life Ins. Co., Indianapolis, Ind. ..... (Claim #59 covered by judgment)	.....	11,550.00
60.	Lawrence W. Rittenoure, by Harry Thompson, Attorney, Clearwater, (Claim #60 covered by judgment)		

Claims Nos. 56, 57, 59 and 60, represented by judgments and not accepting the plan as outlined by the Petitioner, are to be allowed only in the amount of the claim representing the total amount of bonds and interest coupons up to July 1, 1937. This allowance, of course, is subject to any revision of the plan that may be made.

The Petitioner, City of Avon Park, acknowledges the validity of all claims, except as to the amounts represented by the judgments in Claims Nos. 56, 57, 59 and 60.

Mr. Patterson:

I object to the introduction of any proofs of claims unless the City is going to support those claims with some testimony as to who got them or how they got them, or something to show they were furnished to the City, because the objecting creditors can not be deprived of the right of cross examination of parties with
111 reference to the contents of the written proofs and we have a right to cross examine representatives of the bankrupt and at the time the proofs are introduced by the City. That goes to all claims that are filed. My second objection goes to claims based on judgments: We object to the proof of claim based upon a judgment unless the proof is made by the owner of the judgment and it affirmatively appears from the proofs offered that there is no showing made in Claim #46 that the original judgment creditor has made the proof of

claim, the only statement being by a bank as to the fact that the original bonds and coupons have been mutilated after being filed in Court with the judgment. Third, we object to statement of Counsel for the City that these judgments have been assigned to any other party as there is no proof of that fact. Fourth, we object to proofs of claim based upon any bond or coupons which have been merged into judgment as the proof is by parties who are not holders of the judgment and there is no proof of the assignment of the judgment and it affirmatively appears that the bonds and coupons were destroyed before the judgment was obtained by the original judgment creditor.

I object also to proofs of claim of R. E. Crummer and Company on the ground that the consent given by them can not be included because it affirmatively appears from the Petition that R. E. Crummer Company are agents of the City and under the statute bonds owned or controlled by the City can not be computed in determining the percentage of consenting creditors. I also object to proof of these on the further ground that if Crummer & Company is affirmatively shown to be agents of the City, it is not made to appear whether the bonds and coupons sought to be proved were acquired before they became agents of the City or after, or if after, the price of the same and whether or not the agent is seeking to proceed at the expense of City by purchasing
112 obligations of the City who is its employer. We object to the proof of claim of Brown-Crummer Company on the ground it affirmatively appears that Mr. Crummer may have been an officer and there is no proof to deny this fact and that claims filed by it, if Mr. Crummer is an officer of that company, would be subject to the same objection made to claims of R. E. Crummer Company unless there is proof to sustain the contrary.

Court overrules objections. Claimant is directed to supply assignments of judgments included in claims filed.

Court reserves ruling on all judgments as to amounts until such time as proper amounts are given.

Mr. Crittenden:
If the Court please, I want to offer in evidence the judgment of Roger W. Babson attached to proof of claim #56 and I also would like to offer in evidence the certificate of the Clerk showing the securities merged in the judgment also attached to claim #56.

Received in evidence and marked Exhibits "A" and "B", respectively, of Roger W. Babson.

Mr. Jollay:
As to Claim #60, it will appear from this certificate of the Clerk that the judgment is based in part upon notes of the City of Avon Park, dated December 1, 1927, due December 1, 1929, payable June 1st and December 1st, in the amount of $25,000 principal and accrued interest to an undetermined amount. If the Court please, the City objects to the introduction of the claim so far as that amount is concerned because the plan of composition, as will appear when we introduce testimony, does not contemplate refunding that particular portion of that judgment. They were issued under special act and bonds could not be issued for them without approving vote of freeholders.

113 Claim will be received and rulings on objections will be reserved.

The following list of claimants consented in writing to the plan as filed by the Petitioner, City of Avon Park, Florida, viz:

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
1.	Mrs. Rose K. Raithel, 60 Kingsbury Place, St. Louis, Mo.	$2,000	$ 900.00
2.	Board of County Commissioners, Highlands County, Sebring, Fla.	4,000	.....
4.	Florida Municipal Bondholders' Protective Committee, Room 406 Hildebrandt Bldg., Jacksonville, Fla.	51,500	20,270.83
5.	Thomas M. Cook & Company, West Palm Beach, Fla.	23,000	715.00
6.	J. O. Adams, 400 Roosevelt Bldg., Los Angeles, Calif.	3,000	1,305.00
7.	Charles H. Albers, Receiver Northwestern Trust & Savings Bank, 7 So. Dearborn St., Chicago, Ill.	5,000	.....
8.	Harry F. Berls, 1727¾ N. Sycamore Ave., Los Angeles, Calif.	20,000	.....
9.	P. M. Boyd, 215 E. Duval St., Jacksonville, Fla.	4,000	.....
10.	Brown-Crummer Investment Co., Room 800 First Natl. Bank Bldg., Chicago, Ill.	3,000	1,.305.00
11.	R. B. Bryan, Route #2, Madison Fla.	3,000	.....
12.	Johanna Calmer by Warren J. Bleyaert, Agent, 220 W. Sixth St., Monroe, Mich.	2,000	910.00
13.	Fred P. Carr, 1000 Insurance Exchange Bldg., Des Moines, Iowa	3,000	45.00
14.	Bank of Cattaraugus, Cattaraugus, N. Y.	1,000	.....
15.	R. E. Crummer & Company, Chicago, Ill.	....	25,243.33
16.	W. P. Davis, 314 Equitable Bldg., Des Moines, Iowa	10,000	2,495.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
17.	Erwin R. Effler & LeRoy E. Eastman, Trustees U/W of Mary Sedate McCann, deceased, Toledo, Ohio	2,000	.....
18.	First National Bank of Monroe, Monroe, Mich.	3,000	1,365.00
19.	Oliver C. Foreman, 58 E. Washington St., 2018 Chicago, Ill.	5,000	.....
20.	Mrs. Dorothy B. Gossard, 6707 Colorado St., Overland Park, Kansas	10,000	4,350.00
21.	Julia D. Green, 171 W. 57th St., Shelton Island Heights, N. Y.	1,000	.....
22.	Edwin M. Hadley, Jr., 629 Kimball Rd., Highland Park, Ill.	5,000	.....
23.	A. S. Huyck & Company, 100 West Monroe St., Chicago, Ill.	10,000	.....
24.	Walter J. Krager, Cattaraugus, N. Y.	1,000	.....
25.	O. J. Kruger, 111 W. Fifth St., St. Paul, Minn.	5,000	75.00
26.	Henry F. Lankow, Little Valley, N. Y.	2,000	620.00
27.	Clifford Lathrop, First Natl. Bank Bldg., Wichita, Kansas	16,000	1,920.00
28.	Frank Lathrop, First Natl. Bank Bldg., Wichita, Kansas	10,000	1,350.00
29.	Life & Casualty Insurance Company of Tennessee, 159–4th Ave. N., Nashville, Tenn.	5,000	800.00
30.	Rene D. Mallett, Hendersonville, N. C.	1,000	100.00
31.	Prairie State Bank, Augusta, Kansas	18,000	1,170.00
32.	J. D. Puller, Thomas D. Green and W. J. Zalesky, Trustees of J. T. Dismukes, deceased. (Mr. Puller, St. Augustine, Fla.)	25,000	.....

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
33.	J. D. Puller, St. Augustine, Fla. ..	2,000	.....
34.	Howard Scott, Neodesha, Kan.....	1,000	420.00
35.	W. R. Stone, Bristol, Tenn.	5,000	.....
36.	Security Benefit Association, Topeka, Kansas	38,000	5,130.00
37.	Susan Sheaff, Holcomb, Ill.	4,000	160.00
38.	C. L. Swan, Erie, Kansas	5,000	1,200.00
39.	Emma Thornton, Coldwater, Kansas	5,000	375.00
40.	Nellie R. Yeasting, 2817 Powhattan Parkway, Toledo, Ohio	5,000	.....
41.	Elizabeth D. Zalesky, c/o National Savings & Trust Co., Washington, D. C.	1,000	.....
42.	Lawrence Leirman, Winfield, Kansas	7,000	315.00
43.	Carl A. Morawitz, Wichita, Kansas	2,000	780.00
44.	Curtis C. Coxe, as Agent for Trustees of assets of former People's Bank for Savings, St. Augustine, Fla.	8,000	3,680.00
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46.	The Brown-Crummer Investment Co., Wichita, Kansas ..... (Claim #46 covered by judgments.)	24,000	58,535.00
47.	R. E. Crummer & Company, Chicago, Ill. ..... (Claim #47 covered by judgments.)	.....	2,460.00
48.	The Security Benefit Assn., Topeka, Kansas ..... (Claim #48 covered by judgments.)	.....	11,400.00
49.	Aid Association for Lutherans, Appleton, Wis.	5,000	2,300.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
50.	Margaretha Vogt, Box 753, Avon Park, Fla.	1,000	.....
51.	F. R. Messenger, 300 N. Terrace Drive, Wichita, Kan.	9,000	4,140.00
52.	R. E. Crummer & Company, Chicago, Ill.	95,000	14,168.33
53.	R. E. Crummer & Company, Chicago, Ill.	1,000	1,540.00
54.	Brown-Crummer Investment Co., Wichita, Kansas	146,000	35,774.17

116 Whereupon, following the allowance and classification of claims, the City of Avon Park, Florida, offered testimony in support of its Petition filed herein.

R. D. REDDICK, being first duly sworn, on oath, testified on behalf of City of Avon Park, Florida, as follows:

Examination by Mr. Jollay:

It is stipulated by and between counsel for the City and objecting creditors that Petitioner, City of Avon Park, Florida is a municipality existing under constitutional laws of the State of Florida, located in Highlands County, Florida within the Southern District of Florida, and that it is a municipality within the meaning of the national bankruptcy act as amended; it is stipulated also that the total outstanding bonds are $865,500.00 (subject to correction that may be necessary) and that the total interest is $358,251.76, which may be subject to a little correction, as of July 1, 1937, the date of the plan. The total bonds and interest as of that date is $1,283,751.76; and that the City is unable to pay its debts as they mature.

Q. Will you state your name?

A. R. D. Reddick.

Q. Where do you live, Mr. Reddick?

A. Avon Park, Florida.

Q. What, if any, official position do you hold?

A. City Clerk and Collector.

Q. How long have you held such position?

A. January 15, 1938.

Q. As City Clerk, Mr. Reddick, do you have in your exclusive custody and control the records of the City with reference to its tax rolls and its bonded debts and other like records?

A. Not exclusively.

117 Q. Who else has?

A. City Auditor.

Q. What particular books or documents does he have control of or do you have joint control?

A. Joint control.

Q. Now, Mr. Reddick, have you made up from your books or do you have with you a statement showing the amount of the matured bonds of the City of Avon Park as of July 1, 1937?

A. I have a notation on the plan.

Q. Will you testify as to what amount of bonds are outstanding and past due as of July 1, 1937?

A. The outstanding bonds according to my calculations are the same as set forth in the plan.

Q. Will you state what that is?

A. $682,500.00.

Q. What was the amount of outstanding interest past due, whether represented by coupons or not, as of July 1, 1937?

A. The interest accrued, according to my calculations, vary slightly.

Q. What is the interest according to your calculations made from the books—can you state what it is?

A. Not definitely. We only checked our books against this plan. We found according to refunding bonds, 5/1/25, a small discrepancy.

Q. Have you added the amount the books show?

A. No, sir.

Q. Can you do that now?

A. Yes, sir.

Q. Will you state what the figures are now?

A. According to my calculations, interest figures $326,-802.00 to July 1, 1937. I would also like to state these figures were compiled from the bond register which showed vacancies in the payment of coupons and
118 to the best of my calculations, we had to make such adjustments as we found to be correct.

Mr. Jollay:

We reserve the right to introduce the Auditor who audited the books who can give the correct figure.

Right reserved.

Q. Mr. Reddick, do you have in your custody and control the tax assessment roll and records of collections over the period of the last several years?

A. Yes, sir.

Q. Have you made a statement from the books, showing the assessed valuations from 1926 to 1937, inclusive, and the amounts of taxes levied and amounts collected and amounts remaining uncollected?

A. Yes, sir.

Q. And you made that from the books of the City?

A. Yes, sir.

Q. I will hand you a paper and ask you to identify it.

A. I do identify this paper.

Q. What is it?

A. A record of the valuations, of the tax levied in Avon Park, amount collected and amount uncollected thereon for 1926-37, inclusive.

Q. And you made that up from the books of the City?

A. Yes, sir.

Q. And it is correct?

A. Yes, sir.

Mr. Jollay:

I offer in evidence the statement identified by the witness as Petitioner's Exhibit No. 1.

Received in evidence, marked PETITIONER'S EXHIBIT No. 1.

Q. Mr. Reddick, this statement does show a very considerable reduction in the assessed valuation of property from 1926, about $6,536,000, and in 1937, $2,504,000. How do you account for that reduction?

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A. Of course, I had nothing to do with valuations of the property. Any question I made would be an assumed question, but the value of the property has decreased.

Q. It has actually depreciated?

A. Yes.

Q. Due to what causes—causes surrounding Avon Park particularly, or general economic conditions?

A. General economic conditions.

Examination by Special Master:

Q. That 1926 valuation was boom-time valuations, was it not?

A. That is right.

Q. The Florida boom collapsed about that time, did it not?

A. It tapered off in 1926.

Q. And has there been a general depression in the country from 1929 on?

A. Yes.

Direct Examination Resumed.

By Mr. Jollay:

Q. What is the situation of Avon Park with reference to collection of taxes since you have been connected with the City for the past, say, fifteen months? About what percentage of taxes have you been able to collect?

A. I could not say definitely without referring to this.

Q. You may do that.

A. According to this Exhibit No. 1, the collections on taxes are less than 40%.

Q. Do you know if that represents cash collections or not.

A. This does represent cash collections since I have been in.

Q. Prior to you going in, do you know if they
120 collected in cash or bonds?

A. A considerable amount of bonds.

Q. I hand you a paper purporting to be the refunding plan of the City of Avon Park, Florida, dated the 23rd of April, 1938, and ask you to identify it. What is it?

A. It is a refunding plan adopted by the City Council April, 1938—the 23rd day.

Mr. Thompson:

We object to this—because it is not complete in itself. There was a contract that goes along with this and is a part of this business.

Objection to introduction of the original will be overruled and plan will be received in evidence as Petitioner's

Exhibit No. 2, with the understanding that it will be followed with other documentary evidence.

Mr. Jollay:

I now offer in evidence the contract and resolution adopted by the City—contract between City of Avon Park and R. E. Crummer & Company, dated the 17th day of July, 1937, attached to the original petition as Exhibit "B".

Received in evidence and marked Petitioner's Exhibit No. 3.

Q. Mr. Reddick identify this paper.

A. I identify it as a resolution adopted by the City Council of Avon Park on the 23rd day of February, 1939, which adopted the modified plan attached to it as Exhibit "A".

Mr. Jollay:

I now offer in evidence the resolution of the City of Avon Park, dated February 23, 1939, adopting the plan of composition of the City of Avon Park as modified.

Mr. Phillips:

We object to proceeding under a modified plan on the ground there is no proof that creditors have been given notice and that consents filed, except a few today, with proofs of claim include the modifications of the
121 plan, and the statement in the Court's order that it does not adversely affect creditors, because it doubles the costs of the creditors, raising it from $20 to $40 a bond, so I should think that would be right material.

Objection overruled, under Court's Order, and Resolution received in evidence and marked Petitioner's Exhibit No. 4.

(Hearing recessed until 2:00 P. M.)

Direct Examination of Mr. Reddick.

By Mr. Jollay:

Q. Mr. Reddick, I show you a paper which purports to be a resolution of the City Council of the City of Avon Park, adopted on the 12th day of August, 1938, adopting the plan of composition and authorizing the filing of this Petition in Bankruptcy. Is that paper correctly described in the question?

A. It is.

Q. Was that resolution adopted and is that a true copy?

A. It is.

Mr. Jollay:

I offer in evidence the resolution authorizing the filing of the petition in bankruptcy, attached to Petition herein as Exhibit "C".

Received in evidence and marked Petitioner's Exhibit No. 5.

Q. Mr. Reddick, has this plan of refunding now in evidence been adopted by the City of Avon Park in good faith and with the intention to carry it out, if finally approved and put in effect?

Mr. Phillips:

I object—it is calling for a state of mind of others with which he could not possibly be familiar except from hearsay.

Objection overruled.

A. They did, sir.

122 Q. In your opinion, will the City, from your knowledge of the conditions in Avon Park and the attitude of the government and people, in your opinion, do you think the City will in good faith levy the taxes and do all that is required of them to do under this plan?

A. It is my opinion the City will levy the taxes put in the plan of refunding.

Q. Is the City's taxing power for the purpose of paying bonds under its Charter unlimited?

A. Yes.

Q. They do have power to levy taxes and can levy taxes for the payment of this plan—for payment of bonds?

A. Yes, sir.

Examination.

By Special Master:

Q. How long have you lived in Avon Park?

A. Since 1928.

Q. Do you know about what the population of Avon Park is at this time?

A. Approximately 3500.

Q. Do you know what percentage of that population is colored?

A. No, sir.

Q. Do you have any idea?

A. No, sir.

Q. What is the condition of the City today as to business activity compared with the time that these bonds sought to be refunded were issued? Is the City in a more flourishing condition or less flourishing?

A. Less flourishing.

Q. What other source of income does the City of Avon Park have other than from ad valorem taxes?

A. Only taxes and licenses—fines.

Q. Do they own any light, water or gas plants?

123 A. No.

Cross Examination.

By Mr. Patterson:

Q. You did not separate the debt service from ad valorem tax collections in that sheet, did you?

A. No, sir.

Q. The amount collected there for the different years is the total for all purposes—is that correct?

A. That is right.

Q. Down at the bottom you state—"Real Estate foreclosed shown as collected, $206,696.79"—what does that mean?

A. That means that the City in an attempt to collect taxes foreclosed that much property and it is shown on the records.

Q. Where does it appear there—scattered in the different years?

A. Yes, sir.

Q. How long has it been since there was any foreclosure?

A. I don't recall.

Q. Did the City accept the taxes for the administration without requiring the payment of taxes levied for debt service? Has that been done to any extent?

A. No.

Q. Did you take bonds in payment of debt service tax instead of money and then collect money for the administration expense?

A. Since I have been in office we have not taken any bonds.

Q. Do you know anything about before that?

A. No.

Q. Now, you testified as to the amount of bonds and coupons approximately outstanding in 1937. Have
124 any of those bonds and coupons been paid since then?

A. According to my verification of the plan, the figures are the same as City records.

Q. There have been no payments to bondholders since you have been in office?

A. No, sir.

Q. Either for principal or interest?

A. Of course, the payment, I can not say.

Q. Wasn't there a tax levy spread for some bondholders and collected for their benefits?

A. There were levies made—I presume for mandamus and judgments.

Q. Which ones?

A. I could not tell—for what year?

Q. 1937—

A. Taxes were levied for the writ of J. W. Meredith.

Q. Was any tax levied for Sweet's judgment?

A. No.

Q. Or for United Mutual judgment?

A. No, sir.

Q. Wasn't there a peremptory writ requiring the levy for both judgments?

A. Since this was levied before my term with the City I don't know how it was arranged.

Q. You know there was no levy made for the judgments I represent?

A. Yes, sir.

Q. You don't know if there was a peremptory writ issued or not?

A. No, sir.

Q. You know there was a tax levied for the Meredith judgment?

A. Yes, sir.

Q. Do you know who that belongs to?
A. No, sir.
Q. Does it belong to R. E. Crummer or do
125 you know?
A. No.
Q. How much was paid on the Meredith judgment?
A. I don't know definitely.
Q. You don't know how much was paid to them?
A. No, sir.
Q. Was there any judgment for Meredith?
A. For what year?
Q. Any year. Did he have any judgment?
A. I don't know, sir.
Q. You said just now you made a levy for his judgment and I am asking you—
A. According to the minutes on record that levy was made for writ of mandamus.
Q. At whose request was that levy made?
A. The levy was made prior to my office and I am not in a position to give details.
Q. Did you remit any of the money collected from that levy?
A. I don't remit.
Q. You don't have to countersign moneys?
A. No.
Q. Don't you know, as a matter of fact, the money has been paid to Mr. Crummer since this was filed?
A. I have nothing to do with that.
Q. I asked, do you know it has been collected?
A. No.
Q. And your statement is now that no bonds or interest was paid since July 1, 1937?
A. I could not say what happened prior to January 15, 1938. There has been none paid since that time.
Q. None paid since you went in office?
A. That is right.

Q. Except on Meredith's claim?

A. Well, I am not disbursing officer and I
126 could not say anything definitely.

Q. You don't have to be disbursing officer, if you know it, and you said a while ago you knew it. Have you taken any bonds or coupons in payment of taxes since you have been in office?

A. No, sir.

Q. None at all?

A. None at all.

Q. Would they be paid to you?

A. They would bs.

Q. You collect but you don't disburse?

A. That is right.

Q. If you collect, you ought to know if there have been collections made for Meredith or not.

A. There have been collections made.

Q. You don't know where the money is?

A. The City has the money.

Q. They are holding it for his account?

A. That is right.

Q. Do you know how much they are holding?

A. No, sir.

Q. Do you have any record you can refer to and give an approximation?

A. No, sir.

Q. Do you know how many mills were levied for him?

A. No.

Q. You testified this original resolution was adopted by the Council, authorizing this refunding plan and this printed slip that was mailed out and the one identified as representing the original plan—that is correct?

A. Yes, sir.

Q. Were you City Clerk when the resolution was adopted?

A. The original?

Q. Yes.

127 A. I was City Clerk when the modified plan resolution was adopted this year.

Q. But the original was adopted before you became City Clerk, was it not?

A. The present Council adopted the plan the 23rd of April, 1938—I was City Clerk.

Q. The original plan was adopted in July, 1937—the resolution that was adopted first—that was before you went in office, was it not? July, 1937?

A. It was before I went in office.

Q. You were not connected with the City at that time?

A. No.

Q. What steps have you taken as Clerk to carry out this refunding plan? Have you had any duties or has that been handled by the Crummer organization?

A. Steps of what nature?

Q. Any kind.

A. Only an attempt to collect taxes.

Q. Have you solicited the consent of any bondholders introduced here?

A. We sent all the claims out—the City.

Q. You mailed the letters?

A. Yes, sir.

Q. With the printed plan in it?

A. Yes, sir.

Q. Were they returned to you?

A. No, sir.

Q. Nothing was returned to you?

A. No, sir.

Q. Did you make any personal solicitation of any of the creditors who filed their consents or did Mr. Crummer's organization do that?

A. In fact, I was going through the plans and
128 naturally we encouraged people to accept it.

Q. Did you personally solicit?

A. I don't know if any of the persons I—

Q. Did they accept the plan?

A. Yes, sir.

Q. I want to find out whether you solicited the consents of any of these people who have filed.

A. Yes.

Q. Can you name any of them?

A. Not specifically.

Q. Most of them seem to be non-residents—I am not prepared to say there were not any—but did you make any trips out of Avon Park to solicit them?

A. No, sir.

Q. That was a part of Mr. Crummer's duties under his contract?

A. I think that the contract and plan—

Q. Can't you answer whether it was his duty or not?

A. I can not say.

Q. Now, with reference—you say the City has power to issue these bonds. Isn't it a fact there is a quo warranto proceedings pending today to determine the boundary of the City?

A. Yes.

Q. How long has that been pending?

A. Seven or eight years.

Q. How long has it been since the Supreme Court acted on it, do you know approximately?

Mr. Jollay:

I object—it is not in cross of anything on direct.

Objection sustained.

Q. I ask this: Has there been any proceedings under that quo warranto taken by the City since you have been in office?

A. I don't know, sir.

129 Q. You don't know of any but it is still pending?

A. Yes, sir.

Q. Then your statement about the City's power to issue these bonds and make pledges of taxes on these different areas has to be qualified, doesn't it, as to how that suit turns out, doesn't it?

Mr. Jollay:

I object to question—it is a matter of law.

Objection overruled.

A. I don't know.

Q. Since you have been in office, Mr. Reddick, you said the City had foreclosed some taxes. There have been no foreclosures since you have been in office?

A. No, sir.

Q. According to your statement here, you filed in evidence, there are still some very large sums of uncollected taxes that are due. Can you state whether or not since you have been in office the City has made any arrangement with Mr. Crummer about the purchase of the City bonds?

A. No, sir.

Q. You don't know?

A. No.

Q. You don't know whether he has bought any or not since the suit was pending?

A. No, sir.

Q. And the same thing applies to coupons?

A. That is right:

Mr. Jollay:

I want to move to strike the question unless he refers to R. E. Crummer & Company.

Motion denied.

Q. You said in response to the Master's question there are about 3500 people in the City. In which area?

A. In the area of the 1935 census, I believe.

130 Q. That is not limiting it to the original area that the quo warranto is trying to bring back?

A. I don't think that it is.

Q. You don't know how many people live in the area that is in dispute?

A. It is my opinion this census was taken on the inside area. The City limits at that time.

Q. That was before the limits were extended?

A. It was after the limits were contracted to the present limits.

Q. That does not include the population in the area that was extended?

A. In my opinion, it does not.

Q. Your valuations in this statement—does the same thing hold true there? For instance, you give 1937, $2,500,000. Is that the extended area or original area?

A. $2,504,087 is in all areas.

Q. A, B and C?

A. Yes.

Q. That holds true back to 1934 there?

A. In 1934 there was no assessment made in "C" territory.

Q. And 1935?

A. There was.

Q. And the same thing is true of 1936?

A. That is right.

Q. That probably accounts for the low valuation in 1934?

A. Yes, sir.

Q. Do you know what percentage of value of assessments is supposed to be made on that?

A. No, sir.

Q. You don't know whether that is 100% valuation or a smaller percent?

A. No, sir.

131 Cross Examination.

By Mr. Phillips:

Q. Mr. Reddick, I understood you to say on direct this morning that, in your opinion, the City had acted in good faith in its attempts to collect money for the bonded indebtedness—is that correct or don't you know?

A. The City has acted in good faith in attempts to—sure.

Q. How long have you been City Clerk?

A. Since January 15, 1938.

Q. You stated that the City had unlimited taxing power—is that correct?

A. So far as taxing for these, it is my opinion, that the City has taxing power to tax sufficient to cover bonds.

Q. And since you have been in office in January—over a year—you have not made any attempt to collect any money to pay this bonded indebtedness?

A. Personally, I have.

Q. Has any levy been made for bond debt service?

A. As stated before, the City in 1937 made a levy for Meredith. In 1938 they made a levy under the plan.

Q. Under the plan?

A. That is right.

Q. Was any levy made for the payment of $25,000 Rittenoure notes?

A. I don't know, sir.

Q. If there had been a levy made, you would know, wouldn't you?

A. It would be a matter of records. You could refer to records.

Q. You are in active charge of the Clerk's office?

A. Yes, sir.

Q. You know all that takes place?

A. Practically all.

Q. You don't know of any levy being made for the Rittenoure judgment?

A. No.

132 Q. You know peremptory writs of mandamus have been issued by the Federal Court of Judge Akerman requiring you to make some?

A. Not since I have been in office.

Q. They have been pending—you know of that?

A. No.

Q. As a matter of fact, didn't you come to our office in Clearwater?

A. No, sir.

Q. You knew those writs were outstanding?

A. Only be records.

Q. And the records show they were outstanding?

A. Of course, I did not dig into the suits myself.

Q. But so far as you know, no levy has been made to satisfy those writs?

A. Since I have been in office, no.

Q. You would not say then, that since you have been in office the City has made a bona fide good faith offer since January, 1938, to comply with the writs in the Federal Court for the payment of the Rittenoure judgment, would you? It hasn't done a thing, has it?

A. So far as I am concerned, since I have been there they have made levies such as I figured.

Q. And as you had stated, doesn't include anything for the Rittenoure judgment?

A. No, sir.

Q. Your books up there would disclose how the moneys collected for taxes by your predecessor in office were disposed of, wouldn't they?

A. No, I don't have charge of that end of the books.

Q. Don't you know, as a matter of fact, from your connection with the City, that it has been the practice there for years to collect from the tax payers only that

portion of their taxes to be applied to operating
133 expense and to not collect from them the portion to be applied to debt service?

A. I never heard anything about it.

Q. Didn't you tell my partner, Mr. Thompson, that very thing when he called on you?

A. I told him that in 1936 there were two levies made and in our attempts to collect we attempted to collect both.

Q. You separated the levies?

A. They were separate and distinct levies.

Q. One is for operating expense and one for debt service?

A. Yes.

Q. And you issued separate receipts?

A. Not necessarily.

Q. But you did separate the amounts paid?

A. Our receipts showed both columns.

Q. And when the tax payer came in to pay his taxes you collected, in most cases, the portion for operating expense?

A. The portion he would pay.

Q. In other words, if he owed $100.00 and $60.00 was for operating expense, he could pay the $60.00 and not pay the $40.00, is that correct?

Mr. Jollay:

I don't believe it is material—there is no issue raised on it.

Proceed with examination.

Q. Now, the Crummer Company has been directing all of these refunding proceedings, hasn't it? Isn't that correct?

A. I couldn't say.

Q. Do you know of anyone else who have had anythings to do with it with you—any other bondholder?

A. I haven't been active in the procedure other than what was disclosed from my work or our legal department.

134 Q. You know, don't you, that the City procured injunctions against the owners of all judgments against the City of Avon Park, except those judgments owned or controlled by the Crummer Company?

A. I don't know about the legal part of it.

Q. But you do know, since you have been Clerk, no attempt has been made to collect any money for any judgments except those Mr. Crummer or his Company owned or controlled?

A. We try to collect taxes as on the rolls.

Q. You haven't, in fact, allocated any funds for any other creditor of the City except those Mr. Crummer's Company controlled or owned, isn't that true? You know that, as City Clerk, don't you?

A. I don't know as I get the meaning of your question.

Q. You know there are several judgments outstanding against the City of Avon Park. Do you know that?

A. I think so.

Q. As City Clerk don't you know?

A. There are judgments.

Q. You are the man in charge of the billing there in the office?

A. I am in charge of the Clerk's office.

Q. Anyone who wants to know about the bonded indebtedness—you are the man they come to?

A. Yes.

Q. You are the source of information?

A. Yes—I have charge of the records.

Q. If I came to Avon Park to find out about the bonded indebtedness, you are the man I would talk to?

A. Yes and I would show you the records.

Q. You know, from those records, there are a number of judgments outstanding against the City?

A. There are.

Q. You know also you procured injunctions against the holders of all judgments, except those judg-
135 ments owned by Mr. Crummer or his Company?

A. I don't know about the legal proceedings.

Q. Do you know that Judge Barker, the Circuit Judge in your County, issued a writ of mandamus against the City in favor of the Rittenoure judgment seven, eight, nine or ten years ago?

A. I know there have been writs issued.

Q. And those writs have been ignored, haven't they?

A. In my opinion, there has been a levy made each year with the exception of 1937-38.

Q. Don't you know, no money has been paid over on those writs and whatever you have collected you have diverted for operating purposes?

A. I can not say that.

Q. In other words, you don't know very much about the whole situation at all, is that right?

A. I do know that the City is trying to live up to its contract and have done so during the time I have been there.

Q. Before you were there, you know Judge Akerman cited your predecessor to contempt?

A. I don't know. I was not an officer and politics was not in my line.

Q. Before you took over, you know the Federal Court was after you to get some money for the Rittenoure judgment, don't you?

Mr. Jollay:

I object to the question.

Objection overruled.

A. You refer to me or you refer to the City?

Q. The City.

A. I don't know what attempts they made to collect money from former employees.

136 Cross Examination.

By Mr. Thompson:

Q. Mr. Reddick, in support of the allegations of the Petition regarding the total levy, the amount collected and the amount delinquent, you have offered in evidence Exhibit #1, showing those facts more in detail. Now, do your records show how much of that money collected was collected in cash as distinguished from bonds and coupons?

A. There have been no collections in bonds and coupons since I have been in office.

Q. Do your records show—you furnished here in evidence purported record of 1936-7. What do your purported records show regarding collections in cash and collections in bonds or coupons?

A. I don't handle that end of the books and I am not in a position to say other than on a number of receipts it shows some collections in cash and some in bonds, but not since my term of office.

Q. Say $70,464.50 levied for 1937, of which $26,879.30 was collected. Your records do not show how much of that $26,879.30 was collected in cash?

A. This amount on 1937 taxes since I have been in office was collected in cash.

Q. Since you have been in office?

A. Yes.

Q. But before you came in office do your records show how much was collected in cash or in bonds?

A. I don't know.

Q. You cannot say?

A. I could, but I haven't had any occasion to.

Q. And then when this exhibit shows $21,278.95 collected in 1936, you don't know how much was in cash or how much in bonds?

A. Only from the time I have been in office all collections on any years levied were made in cash.

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Q. Regarding the item of $206,696.79 in real estate foreclosed, is a part of that $206,696.79 included in the $26,879.30 and the $21,278.95.

A. I think that is self-explanatory on the notation that that is collections.

Q. You mean we can take $206,696.79 and divide it among those ten years and get an estimate of where the money was applied?

A. They might go back farther than that.

Q. The Petition says $206,696.79 was during this period and I infer, 1926-1937, was collected by way of foreclosure of real estate. Was any of that included in this $26,879.30 which was collected, according to your exhibit, in 1937?

A. You will notice that it is according to collections for 1935 and prior.

Q. Mr. Reddick, what do your records show with reference to the expenditure for operating expenses of the City of Avon Park for the years, 1936-1937? I will refresh your memory by referring to these telegrams.

Mr. Jollay:

I object to anything not referring to the plan.

Objection overruled.

A. I think the City Auditor can verify those amounts better than I can.

Q. That is your telegram?

A. I signed it.

Q. And you received this wire?

A. Yes.

Mr. Thompson:

I offer in evidence the telegram dated October 24, 1938, and reply of Mr. Reddick, which he has just identified.

Mr. Jollay:

I object to introduction.

Objection sustained because you cannot offer evidence on cross examination.

138 Q. In answer to my inquiry as to how much money was used for operating expenses for the year, 1936, did you on October 24, 1938, advise me that that sum was $35,735.81?

Mr. Jollay:

I object. I don't see that it is material; there is nothing in the examination in chief and nothing in the petition.

Objection overruled.

A. I sent this telegram.

Q. On October 24th I wired you, did I not—"Please wire collect sums actually used for operating expense for years 1936 and 1937 respectively—also amount derived from fine fund"—you received that telegram from our office?

A. Of course any answer I make to a question would be assuming this was an identical copy and without records how could I say I received those exact words?

Q. Did you on October 24, 1938, send me a telegram saying this: Addressed to Phillips & Thompson, Clearwater—"$35,735.81 operating $882.95 from fines; $31,992.91 operating $714.50 from fines, 1936 and 1937 respectively to the best of my knowledge"—R. D. Reddick, City Clerk?

A. I cannot verify the words and cannot verify the date, but I did send a telegram similar.

Telegrams offered for purpose of identification and marked Exhibits #1 and #2.

Cross Examination.

By Mr. Crittenden:

Q. Mr. Reddick, do you know that Mr. Roger W. Babson obtained a peremptory writ of mandamus in 1937 ordering a levy to pay the balance of his judgment?

A. I know nothing of the basis of the 1937 system.

Q. You have no knowledge whatever of a writ having been obtained?

A. The assessment was on the rolls when I went in in 1938 and started collecting what was on the rolls.

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Q. Was there any levy on the 1937-8 roll of the City for the account of Roger W. Babson?

A. I could not say.

Q. You made no collections in 1938 for the account of Roger W. Babson from a levy made in 1937-8?

A. I made collections on 1937 rolls during 1938.

Q. Did you collect anything for the account of Roger W. Babson?

A. I collected taxes on the rolls.

Q. You cannot state that you collected money for Roger W. Babson's account?

A. If it was assessed for him, I collected it.

Q. Was the levy made on the 1938 roll for the account of Roger W. Babson?

A. No, as stated before, the levy was made under provisions of the plan.

Mr. Phillips:

Mr. Jollay agrees that if we submit satisfactory evidence between now and the next hearing of writs issued in any competent Court against the City of Avon Park in connection with these tax matters, he will admit such

proceedings in the record without the necessity of certified copies and will admit everything that has been done under them as shown by the records of the City and the proceedings in the several Courts.

D. F. CANFIELD, being first duly sworn on oath, testified on behalf of petitioner, as follows:

Examination.

Mr. Jollay:

Q. Mr. Canfield, will you state your name and place of residence?

A. D. F. Canfield, Avon Park.

140 Q. And your position?

A. Auditor and Comptroller of the City of Avon Park.

Q. How long have you held that position?

A. Since first of January, 1938.

Q. How long have you lived in Avon Park?

A. Going on 27 years.

Q. You have heard the testimony of Mr. Reddick regarding the plan of composition now before the Court and you have some knowledge of that plan and its adoption?

A. I have.

Q. Would you say that plan has been adopted by the City in good faith for the purpose of adjusting its indebtedness?

A. Yes, and I would further state that before it was accepted by the present administration, they called several meetings and one in particular, at which they called all citizens and discussed the matter because they were not familiar with the plan inasmuch as they just went in office. The old board perhaps knew all about it.

Q. It had been adopted by the old board previously?

A. Yes.

Q. What was the result of those meetings?

A. They decided finally, after having Mr. Lassiter down there, to accept the plan.

Q. Was there a good turn out of citizens?

A. As good as you could expect under the circumstances.

Q. And they felt satisfied?

A. Yes and they appointed a committee of citizens and taxpayers and they reported favorable.

Q. The plan was the work of a considerable period of time and a considerable number of persons?

A. From the first of January until finally
141 August, the resolution was passed, I believe.

Q. Mr. Canfield, you have lived in Avon Park a long time and I presume you have some knowledge of the general conditions of affairs in Avon Park for the last ten years or so.

A. I believe so.

Q. Would you mind stating to the Master a statement generally of economic conditions putting Avon Park in its present situation?

A. In the boom the bubble busted in 1926 and on top of that in 1929 every bank in our county except one at Lake Placid failed. Since that time matters have been growing worse if anything. We depend more or less on citrus. I have at the present time 800 boxes of tangerines out of 1000. 200 were picked and 800 are going on the ground. That is the present condition.

Q. Is there any bank in Avon Park now?

A. One, yes. Used to be two.

Q. Do you know about what the deposits in that bank are?

A. I believe they are only about 1/10th of what they were in '26.

Q. Which would be about how much?

A. $300,000 or $400,000—I think. I am not sure.

Q. How does the population of Avon Park compare with what it did in 1925 and 1926?

A. Not as much.

Q. Has the City of Avon Park been able to secure new industries or has it lost them?

A. Lost them.

Q. Do you know when they first defaulted in the payment of its bonded debt?

A. About 1929.

Q. Do you know about what it owed in 1929—the principal bonds, approximately?

A. Over a million dollars.

Q. About how much over a million dollars?

A. Possibly $100,000.

142 Q. About $1,100,000 when first defaulted and at this time its debt is about $865,000?

A. Yes.

Q. What became of the difference?

A. Most of it was used in settlement of taxes—bonds with bonds and coupons.

Q. And it has been paid off and canceled?

A. Yes.

Q. In other words, between 1929 and 1937 there was approximately $300,000 of the bonded debt of Avon Park paid off?

A. Something like that. Not the bond debt alone but with coupons—bonded debt and interest.

Q. Now, getting back to your particular duties, will you state to the Court what they are as City Auditor?

A. I keep a ledger and do all of the drawing, collect warrants, make up reports, comparisons, and such as that.

Q. Pay out all money paid out?

A. Pay out all money.

Q. Have you since you became City Auditor paid out any moneys to any of the judgments represented by these objecting creditors?

A. Yes.

Q. Do you know to whom?

A. Rittenoure and Babson. I don't know if I paid—

Q. I believed it was stated a while ago that counsel for Rittenoure had received nothing at all on the judgment. He said he had not, but you did—do you know how much you paid?

A. $1400.00, I believe. I know there was one item.

Q. And you paid Mr. Babson?

A. Yes.

Q. And those amounts were the proceeds of
143 levies made under writs of mandamus?

A. Yes, previous to 1937.

Q. You stated a while ago that the population of the City is about 3500, or Mr. Reddick stated—is that about right?

A. Approximately.

Q. Do you know the proportion of colored and white?

A. I should judge there are about 600 colored.

Q. Has the City of Avon Park any other sources of revenue out of which to pay its debts than ad valorem taxes and fines and forfeitures?

A. Licenses, minor building permits, such as that. Miscellaneous. They also sell real estate. They have foreclosures.

Q. What do you do with proceeds of the real estate that you sell?

A. All put in a general fund.

Q. The City does own a considerable amount of real estate though?

A. I should imagine at least 10% of the town.

Q. That has been acquired through foreclosures in an attempt to collect taxes?

A. Yes.

Q. Do you know whether or not any considerable campaigns to collect taxes have been put on by the City in the last four or five years since they became in default?

A. I think those foreclosures were started in 1933, I believe it was the first, and continued up to the last one, which I believe was January, 1938.

Q. So during that period of time the City in an attempt to collect taxes not only collected some but took over approximately 10% of the town?

A. Yes, sir.

Examination.

By Special Master:

Q. Do you know about what the annual cost of operating the City of Avon Park is, including all necessary expenses?

A. About $30,000.

144 Q. About $30,000 a year to operate the City?

A. Yes.

Cross Examination.

By Mr. Patterson:

Q. You say Mr. Lassiter came down—is that—

A. Representative of Mr. Crummer.

Q. They prepared the plan, did they?

A. The plan was prepared before I knew about it. I presume they did.

Q. Who brought it to the City?

A. Mr. Lassiter.

Q. And you spoke of the City Commission considering the plan.

A. The present City Commission knew nothing whatever about the plan and they wanted a full explanation.

Q. Did Mr. Crummer explain to the City Commission that he owned 200 or 300 of the bonds of the City?

A. Not that I know of.

Q. Has he advised the City that he owns these judgments and if so, when?

A. I don't know. Not to my knowledge.

Q. You don't know whether he owned these before or since the plan was adopted?

A. No.

Mr. Jollay:

I object to questions.

Objection sustained.

Cross Examination.

By Mr. Crittenden:

Q. Mr. Cranfield, you testified about $300,000 has been taken in in bonds and coupons. In collecting these taxes from 1933 on, were any of those bonds applied against debt service taxes?

A. That I really could not tell. It was before
145 I ever took office. No bonds have been collected since I took office. We put a stop to that right now.

Q. The only thing you know is that some $300,000 of the indebtedness has been retired by bonds?

A. Yes.

Q. You are auditor and you say you keep the ledger, etc., of the City. What do records show with reference to the acceptance of bonds and retirement of taxes? You have checked those accounts have you not?

A. There has been an audit made by an Auditor. I don't get the drift of your question.

Q. Do you know of your own knowledge whether bonds and coupons were accepted and applied against debt service taxes?

A. I believe they were, yes, by the former administration.

Q. Were they applied indiscriminately against all taxes levied from 1933 on?

A. From 1935.

Cross Examination.

By Mr. Phillips:

Q. You say you paid us $1400 this year for Rittenoure?

A. Not this year.

Q. It was in 1937, wasn't it?

A. I believe it was.

Q. That was on the old writ?

A. Yes.

Q. On what basis was that $300,000 that you spoke of taken in—cash payment?

A. That was taken in by Mr. Pardee who was
146 Attorney and had the collection of delinquent taxes during his term of office as Attorney.

Q. He is the man that would know about that?

A. Yes.

Q. It wasn't cash was it?

A. Some cash.

Q. What is the name of the bank there?

A. Barnett State Bank. There is a little explanation I would like to give which would clarify some matters. Reference has been made to the $206,696.79. At the time that property was foreclosed it was written off of the uncollected amounts of the years to which it applied, way back to 1916, and that $206,696.79 has no relation to the presene schedule of uncollected taxes—it is not included. They were written off. There is another thing about that 1936 tax that ought to be cleared. In 1936 the regular roll was gotten up in time for collection—in, I presume, October or September, 1936. Then in March, 1937, some of these gentlemen, I presume, were familiar—they went in Federal Court and got a mandamus to require a levy

of 34 mills. Before that could be put on the roll, the majority of people had already paid their taxes and that is why that one year that an operating tax was collected, without a portion for debt service in 1936. If a man comes in and says he wants to pay his operating tax for 1936 and the Clerk takes it and shows it on the receipt—and if a man comes and wants to pay his bonds, the Clerk takes it and that is the only way that is done. If a man comes to pay 1938 operating, the Clerk takes it, but that is all. It is all on one roll.

Cross Examination.

By Mr. Patterson:

Q. I understand that the 1938 levy was made for what purpose—for the plan?

A. Yes.

Q. Made for bonds that have not been issued?

A. Yes.

147 Re-Direct Examination.

By Mr. Jollay:

Q. Mr. Canfield, you stated a while ago you are familiar with this plan of composition and the refunding contract between the City of Avon Park and R. E. Crummer and Company. Is the City of Avon Park paying R. E. Crummer & Company or any other person any compensation in connection with this matter other than that disclosed in the plan?

A. They have not at the present time and do not contemplate doing so.

Q. They have not made any secret arrangements to pay anything other than in the plan?

A. Not that I know.

Q. Under the plan the costs are to be borne by R. E. Crummer & Company?

A. Yes.

Q. And they are to reimburse themselves according to the plan?

A. Yes.

Q. And there are no other arrangements or agreements?

A. Not that I know of.

Examination.

By Special Master:

Q. Is the City to pay out anything at all in connection with the compensation?

A. Not one cent.

T. A. McNICHOLAS, being first duly sworn on oath, testified on behalf of Petitioner, as follows:

Examination.

By Mr. Dollay:

Q. Mr. McNicholas, state your name and address.

A. T. A. McNicholas, Avon Park, Florida.

Q. What is your position, if any, with the
148 City?

A. City Attorney.

Q. How long have you been City Attorney?

A. Since January, 1938.

Q. Mr. McNicholas, under the City's petition here the allegation is made that the town of Avon Park was organized in 1913 and included about 3 square miles and it issued certain bonds which are described in Paragraph 3 of the Petition, total amount of which is now outstanding, $362,500. Have you examined that Charter of the City under the original act and determined whether or not, in your opinion, those bonds are general obligations of the original town?

A. They are general obligations.

Q. And the town of Avon Park as it then existed and successor cities have unlimited power to tax for the payment of these debts?

A. Yes, sir.

Q. Afterwards, in 1925, was there another Act passed enlarging the town?

A. Yes, sir.

Q. That was Chapter 10,320, Acts of 1925?

A. Yes, sir. That took in 36 square miles of territory.

Q. Including the three originally in the town?

A. Yes.

Q. In other words, a whole township?

A. Whole Township—No. 33.

Q. After that Act went into effect, did the town of Avon Park issue other bonds?

A. Yes.

Q. In our petition we alleged that there is $505,000 of bonds outstanding after this Act went in effect—is that correct?

A. That is about correct.

149 Q. Did that Act make any exception as to the payment of the bonds issued after it went into effect?

A. I don't know—the Act would speak for itself. It is my recollection that it provides that the status of bonds then outstanding should not be affected by the Act—the property would remain and continue liable.

Q. The added territory was not made liable for the original bonds of Avon Park?

A. That is correct.

Q. Was the power granted the City of Avon Park to levy an unlimited millage for bonds issued pursuant to this provision?

A. Yes.

Q. You know something about this quo warranto litigation?

A. Yes.

Q. Would you mind stating the status?

A. It was a suit brought some eight years ago by grove owners, outside property owners, and it has been footballed in and out of the Supreme Court, backwards and forwards for years, and some four or five years ago the Supreme Court issued an order appointing Judge Barker, our Circuit Court Judge, to take the testimony and directed that he take and file it within ninety days. Nothing has been done. Some testimony has been taken. Mr. Edwin Walker who represented main Complainants in that suit, since died and whoever has succeeded him, I don't know definitely,—but the main objector was the Pittsburgh Florida Fruit Growers people and Mr. Jesse Wilson at Bartow was supposed to succeed him and Mr. Wilson has been sick and nothing has been done, except I have settled with every Complainant in that suit except two.

Q. Has there ever been a writ actually excluding the territory from Avon Park?

A. No, it was done by legislation—passed a
150 new Act—and it was never done under writ of Court.

R. D. REDDICK, having previously been sworn, under oath, testified further, as follows:

Examination.

By Mr. Jollay:

Q. I am recalling Mr. Reddick for the purpose of clarifying the amount of past due interest on outstanding bonds accrued to July 1, 1937, which was testified to this morning as being $326,802. Now, Mr. Reddick, since you testified this morning have you made a further examination of the figures as disclosed by the modified plan compared with the bond record?

A. I have.

Q. Have you talked also with the Auditor who prepared the figures in the plan?

A. I have.

Q. After this examination—after talking to the Auditor—what do you find to be the actual state of the facts as regards those figures?

A. I find that the discrepancy according to 5/1/25 bonds issued 1925 was a transposition and my discrepancy should apply to 5/1/25 improvement bonds.

Q. What was the amount transposed from May 1, 1925, improvement bonds to May 1, 1925, refunding bonds?

A. $11,550.

Q. And that error arose how?

A. By a transposition in the bonds of the same date, reverting back to legal descriptions.

Q. Were any of those coupons included in the judgment?

A. They were.

Q. And how were they described in the judgment?

A. The description in the judgment was
151 5/1/25 refunding bonds, numbered above 40.

Q. And there were no refunding bonds numbered above 40?

A. Correct.

Q. And the coupons were actually clipped from the 5/1/25 improvement bonds?

A. Correct—it must have been.

Q. It must have been because there was no numbers of bonds in the other issue as described?

A. None above 40 in the refunding bonds out—improvement bonds go above.

Q. Does that mistake make any difference in the final amount due on interest?

A. It does not.

Q. What is that final amount due as of July 1, 1937?
A. The final amount?
Q. That is the grand total.
A. According to the plan, $358,251.76.
Q. That is the same figure shown in the plan?
A. Same figure.

Examination.

By Special Master:
Q. Is that figure as shown in the plan and testified to by you the correct total, in your judgment?
A. In my opinion, yes, sir.

By agreement of counsel the hearing is adjourned to Wednesday, March 22, 1939, at ten-thirty in the forenoon, in the Assembly Room, Third Floor of the Court House, in Orlando, Florida.

152 Continuation of the hearing before the Special Master was held on Wednesday, March 22, 1939, at ten-thirty in the forenoon, in the Assembly Room, Third Floor of the Court House, Orlando, Florida, with following appearances:

Allen E. Walker, Special Master.

Henry L. Jollay and T. A. McNicholas, Attorneys for Petitioner, City of Avon Park, Florida.

D. F. Canfield, Auditor of the City of Avon Park, Florida.

W. John Phillips and Harry L. Thompson, of the firm of Phillips & Thompson, Attorneys, representing Lawrence W. Rittenoure.

H. C. Crittenden, Attorney, representing Roger W. Babson.

Giles J. Patterson, Attorney, representing William E. Sweet and United Mutual Life Insurance Company.

A. McKee Elwell, member of City Council of Avon Park, Florida.

E. W. Hartt, President of City Council.

F. W. Shockley, a former City Clerk and Tax Collector of Avon Park, Florida.

H. A. Lassiter, Vice-President of R. E. Crummer & Company, fiscal agent.

Robert Pleus, Attorney for R. E. Crummer & Company, fiscal agent.

Mr. Thompson:

With reference to Claim #60 filed on behalf of Lawrence W. Rittenoure, I find the date of the notes described in said proof is in error and should be December 1, 1927 instead of December 1, 1929, which is the due date, and ask leave to correct same.

Granted by Special Master and claim corrected.

Mr. Jollay:

At this time I wish to supply the original assignments in connection with claims of R. E. Crummer & Company and Brown-Crummer Investment Company, which are to be attached to said claims and ask leave to withdraw the original assignments and substitute copies therefor.

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Mr. Patterson:

Counsel for the City states that the assignments of judgments offered are not for the purpose of proving judgments but for the purpose of proving the securities upon which the judgments are based in conformity with the plan of composition.

Assignments received and attached to the claim and leave granted to withdraw the original assignments and substitute copies therefor.

Mr. Patterson:

We object to the proof of the judgments with the assignments unless made the basis of the claim. We do not see it is material in the case, in view of the statement made by Counsel that he is not attempting to prove them as a claim.

Objection overruled.

Objecting creditors waive cross examination of Mr. T. A. McNicholas.

Petitioner rests and Petitioner has produced and has available Mr. A. McKee Elwell, a member of the City Council, Mr. E. W. Hartt, President of the City Council, Mr. F. W. Shockley, former Clerk of the City of Avon Park, and Mr. H. A. Lassiter of R. E. Crummer & Company, in accordance with instructions.

Testimony on Behalf of Lawrence W. Rittenoure, William E. Sweet, American United Life Insurance Company and Roger W. Babson, Objecting Creditors.

A. McKEE ELWELL, being first duly sworn, on oath testified as follows:

154 Examination.

By Mr. Patterson:

Q. What is your name?
A. A. McKee Elwell.
Q. You live in Avon Park?
A. Yes, sir.
Q. What position do you hold with the City?
A. Member of City Council.
Q. How long have you been on the Council?
A. A year and three months.
Q. That is since January, 1938?
A. Yes, sir.
Q. Did you hold any position prior to that time?
A. No, sir.
Q. What business are you in?
A. I am office manager for Mandis Dairy.
Q. Where is that?
A. In Avon Park.
Q. What do you know about this plan? Do you have any special information with reference to the tax situation in Avon Park?
A. Only as a member of the City Council—we have studied that refunding agreement very thoroughly.
Q. You were not a member of the City Council when it was first adopted by the Council?
A. No, sir.
Q. And you were a member when it was re-examined in 1938?
A. Yes, sir.
Q. Mr. Canfield stated at the last hearing that the plan was presented to the Council by a representative of the Crummer Company. Do you remember that?
A. Yes, sir.

Q. You were present?

A. Yes, sir.

Q. It had not been adopted prior to that?

155 A. It had been adopted by the previous Council.

Q. What was the purpose of having a representative from the Crummer Company?

A. We had just been in office possibly ten days or so and the hearings to validate the bonds were scheduled for possibly a week and as a new Council we were not thoroughly familiar with the refunding program, so we asked for an extension until we had a chance to study it and had a representative of Crummer speak to the Council and also to a number of citizens and at the same time we had some copies of the agreement multigraphed, possibly 40 or 50, and distributed them among larger taxpayers, prominent citizens and real estate men and requested that they study it and later we had a hearing of this commission and the concensus of opinion was that they should go ahead with it.

Q. Previous to that time, did you have any knowledge much of the general plan?

A. No, sir. I had never taken any interest in it before being elected.

Q. Then the Council, as I understand, authorized them to proceed under the plan?

A. Yes, sir.

Q. You know the plan has been amended since the petition was filed?

A. We were furnished with a copy of amendments, revisions or corrections. I know there have been some changes made.

Q. Do you know what the changes are?

A. Yes, sir.

Q. What are they?

A. As I recall it, they set forth the manner in which the First National Bank of Chicago should act as ex-

change agent and exchange the bonds and manner of setting up the sinking fund and millage which should be levied against the various territories within the City. There was no change, as I recall it, in the interest on coupons.

Q. What was the change on interest?

156 A. There was no change.

Q. You don't recall any meeting of the City Council when they made any change in the plan of refunding after the meeting to which you referred a while ago? Do you remember any meeting within the last few months where the plan was changed?

A. We had a special meeting, possibly a month or six weeks ago in which this revised, corrected plan was presented and the City passed a resolution favoring it, approving it.

Q. And what you have stated as changes is substantially your understanding of the changes?

A. The various changes which we checked against the old plan—there was nothing outstanding in the way of changes.

Q. Who submitted that proposed change?

A. It was submitted by Crummer & Company.

Q. Prepared by them and submitted to the City Council?

A. I suppose so.

Q. Who is the attorney for the City of Avon Park?

A. Mr. T. A. McNicholas.

F. W. SHOCKLEY, being first duly sworn on oath, testified as follows:

Examination.

By Mr. Patterson:

Q. What are your initials, Mr. Shockley?

A. F. W.

Q. You live in Avon Park?

A. Yes, sir.

Q. How long have you lived there?

157 A. Practically all my life.

Q. Have you ever occupied any position with the City of Avon Park?

A. Yes, sir.

Q. What position?

A. I was City Clerk and Tax Collector.

Q. For how long?

A. From January, 1932, to December, 1938.

Q. You were Tax Collector then and City Clerk when the City adopted the resolution authorizing the acceptance of this plan of refunding in July of 1937?

A. Will you state that again?

Q. You were Clerk when they approved this plan in July, 1937?

A. Yes, sir.

Q. And it was your duty to keep records and collect taxes of the City at that time?

A. Yes, sir.

Q. What, if anything, did you have to do with making up tax levies while you were in office—what were your duties?

A. As City Clerk, I prepared budget estimates and presented them to the Council for their consideration.

Q. And entered those on the minutes, I suppose, or made records—whatever records were required?

A. Yes, sir.

Q. Did you make up tax books and rolls?

A. No, sir.

Q. Who made up tax rolls?

A. City Tax Assessor.

Q. There was a Tax Assessor?

A. Yes, sir.

Q. You did instruct the Tax Assessor as to levies that were made or furnish him copies of your records?

A. I furnished him copies of our records, yes, sir.

Q. As to millages to be levied for different
158 propositions?

A. Yes, sir.

Q. If a suit was entered against the City of Avon Park, was service made on you or what officer?

A. I believe it was usually made upon the members of the City Council and other City officials.

Q. Was it made on you at the same time?

A. I believe it usually was, yes, sir.

Q. Do you recall whether or not there were certain suits entered against the City of Avon Park resulting in judgments along in 1935 or 1936?

A. I do.

Q. Do you recall whether or not on any of those judgments writs of mandamus were issued out of Federal Court requiring levies?

A. In certain cases I believe there were.

Q. Do you know whether there were any levies made for those judgments?

A. Yes, sir. There were levies made.

Q. What year?

A. I am not absolutely certain of years.

Q. What is the best of your recollection?

A. Two or three years.

Q. When does your fiscal year begin?

A. October 1st.

Q. And you pass your resolution for your tax levies shortly previous to that?

A. It is customary, I believe, to pass it during the month of October.

Q. So the levy for 1937, we will say, would have been made in Septemeber or October of 1936?

A. No, sir.

Q. What year?

A. The 1937 tax levy would probably be made in October of 1937.

Q. And you were City Clerk at that time?

159 A. Yes, sir.

Q. Was any tax levy made that year for any judgments against the town of Avon Park?

A. I believe that there was a levy. I am not sure.

Q. You don't remember?

A. I am not positive, no, sir.

Q. Do you recall whether or not there was a levy made in response to a writ of mandamus brought by Gillespie and others for 1937? Meredith, Gillespie and Rogers?

A. Will you advise me the location of that concern?

Q. All I know was three individual names given.

A. I remember a W. J. Meredith. I think that was the name of one of the parties bringing the suit.

Q. You don't know whether there was a tax levy made for that suit?

A. I think there was.

Q. And you think there was a levy made for other creditors at the same time?

A. I don't remember.

Q. Do you recall, Mr. Shockley, whether or not the City officials so far as you know, took any active steps under the resolution of July, 1937, before you went out of office? That resolution is the one adopting this plan and contract with the Crummer Company.

A. They adopted the resolution and as I remember it, they promised the Crummer Company to co-operate with them in every way they could to effect a refunding agreement.

Q. That is about all the City officials did before January, 1938?

A. Practically speaking, yes, sir.

Q. In other words, as I understand it, this contract of the City left the carrying out of the plan largely to R. E. Crummer & Company?

A. They were appointed their agents in the
160 refunding.

Q. Coming back to that levy of 1937, I don't want to mix you up—I want certain facts in the record. Do you recall the amount of that levy or how it was divided for this proposition? If you don't, just say so, as the records will show.

A. I really don't, sir. I don't remember the amount.

Q. You did not remember the 1936 any more than you did 1937?

A. No, it is my impression that in the year 1936 there were levies for about six or seven different judgment creditors.

Q. But you don't remember that about the 1937 levy?

A. I am not positive about it, no, sir.

Examination.

By Mr. Thompson:

Q. Mr. Shockley, in your office you became familiar with all the different volumes that these assessments were in?

A. Yes, sir.

Q. Do you remember one book, size about 14x18 and about one-half inch thick, in which one levy was made for one creditor—debt service of W. J. Meredith?

A. I remember such a book and that that book had only debt service in it.

Q. And there was only one creditor levied for in that book?

A. I cannot say positively there was only one creditor levied in that book. Our records would not have been made up in that fashion. Whatever debt service levy was made would have been in that book, regardless of one creditor or a dozen.

Q. Are you sure there were not ony other debt service levies made for that year? Isn't it true the only

debt service levy made was that of W. J. Meredith, Highlands County, Mandamus?

A. I am not positive of that point.

161 Q. You don't remember any other?

A. That is the year 1937?

Q. I think 1936.

A. Would you tell me just which year it was now?

Q. Wasn't there one for 1936?

A. As I believe I stated before, I think in 1936 we levied for several judgment creditors.

Q. Was there one like that for 1937?

A. And in 1937, I am sure we again levied for judgment creditors, but I am not certain as to how many we levied for.

Q. You don't remember any judgment creditor except Meredith?

A. I think he was in that levy, yes, sir.

Q. You don't remember any other?

A. No, I don't remember the amount of the levy so I could not tell you on that.

Examination.

By Mr. Crittenden:

Q. Mr. Shockley, do you recall a writ of mandamus issued out of Federal Court in March, 1937, for Roger W. Babson, ordering a levy for the fiscal year then ensuing on the 1936-37 fiscal year—an order to spread a levy thereafter?

A. I don't believe I understand your question.

Q. Do you recall a writ of mandamus issuing out of Federal Court in 1937 commanding a levy for the account of Roger W. Babson?

A. No, sir. I do not.

Q. You don't recall it?

A. No, sir.

Examination.

By Mr. Phillips:

Q. Mr. Shockley, while City Clerk, isn't it a fact you followed the custom of dividing your levies into two categories, one for debt service and one for operating expense?

A. Yes, sir.

Q. And you permitted the taxpayers to pay
162 one or the other as they saw fit?

A. I believe that occurred in one year only, but I am not positive what year it was. I think the ordinance of levy provided the conditions under which they could pay either debt service or operating or both.

Q. In that year, practically nothing was paid for debt service—isn't that correct?

A. I don't remember what year it was, but I remember there was one year during the time I was City Clerk and Tax Collector in which such provision was made.

Q. Isn't it true that practically all funds collected for debt service were diverted or used for operating service?

A. No, sir.

Q. What was done with those funds?

A. They were applied to bonds and interest coupons—judgments.

Q. What was your answer?

A. My answer was that those moneys were used to buy bonds and coupons and apply on judgments.

Q. And among those moneys were certain funds specifically earmarked for certain writs of mandamus?

A. In certain years I believe there were.

Q. You ignored writs of Federal Court and State Courts also and used the money as you saw fit?

A. No, sir.

Q. During all the time you were City Clerk, there were mandamus suits outstanding against you on behalf

of Lawrence W. Rittenoure in State Court and Federal Court?

A. I remember you had a judgment against the City.

Q. And you remember writs were outstanding also—writs of mandamus requiring them to make levies and pay the judgments?

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A. Yes, sir.

Q. Did you levy?

A. I believe we did.

Q. Don't you know?

A. We paid all moneys collected on Mr. Rittenoure's writs over to his attorneys.

Q. You did not divert any of those to operating expense?

A. No, sir.

H. A. LASSITER, being first duly sworn, on oath testified as follows:

Examination.

By Mr. Patterson:

Q. Mr. Lassiter, who are you connected with?

A. R. E. Crummer and Company.

Q. How long have you been connected with that company?

A. That company since April, 1934; its predecessor since June, 1930.

Q. Who was its predecessor?

A. Brown-Crummer Company.

Q. Who is Brown-Crummer Investment Company?

A. A firm of investment bankers of Wichita, Kansas.

Q. The same Mr. Crummer?

A. Yes, sir.

Q. He is still connected with Brown-Crummer?

A. Yes.

Q. Is he President of it?

A. Yes.

Q. The R. E. Crummer Company was employed by contract with the City of Avon Park to effect a refunding of its bonded indebtedness—is that correct?

A. Correct.

164 Q. That was embodied in the resolution adopted by the Council, July, 1937?

A. I believe that is the correct date.

Q. Is the present contract the same as the contract which was set out in that resolution or have there been any changes?

A. There have been no modifications in the contract.

Q. Do you remember the date of the contract? Is it the date of the resolution or is the contract dated subsequently?

A. I believe it is the same date. It usually is. The resolution sets forth the contract.

Q. Under that contract what were the duties of R. E. Crummer & Company, briefly speaking?

A. It was the duty of R. E. Crummer & Company to attempt to complete a refunding of the indebtedness of Avon Park within the mills set forth in the contract, including performing all technical services that had to be performed, in order to accomplish those results and presenting the plan to bondholders and making exchanges.

Q. That is summarized in Section 7 in the printed circular called a "Refunding Plan" of the City of Avon Park, dated April 23, 1938?

A. Generally, yes.

Q. Under that R. E. Crummer & Company was to assemble bonds to be refunded; print refunding bonds; represent the City in legal proceedings to validate said refunding bonds; obtain approving opinion of nationally recognized bond counsel upon the issuance and validation of said bonds, said counsel to be selected by said R. E. Crummer & Company; pay all other expenses in

connection with the refunding which may be approved by R. E. Crummer & Company; and also indemnify the City for costs to employ Counsel to represent it in the refunding plan?

A. Correct.

165 Q. Mr. Jollay was the Counsel employed to represent the City of Avon Park in the refunding proceedings?

A. In the bankruptcy matter.

Q. He was selected by R. E. Crummer & Company?

A. That is right.

Q. And has represented R. E. Crummer & Company in other cases?

A. Oh, yes.

Q. After this contract was made in July, 1937, did you proceed then to try to get consents of various bondholders to the plan?

A. As soon as the details were in position where we could set forth the plan to the bondholders. I recall that it was several months before that was done. It may have been late in summer or early fall before the plan was presented to the public.

Q. This printed slip I have here is dated April 23, 1938. Was there any general communication sent to bondholders before, say, February, 1938?

A. I don't remember the exact date, but it was well before that.

Q. The reason I ask was that Mrs. Elwell testified the new Council came in office January, 1938, and the City Council reconsidered the matter at that time. My question was whether or not you proceeded after the first contract or whether you waited until after February, 1938, before you became active?

A. Perhaps if you will permit it, if I would outline what we did, it would save questions. As soon as the contract was signed our clerical force immediately began assembling information that is necessary in order to pre-

sent any plan to the public, except in a more or less correspondence form—something that a bondholder can definitely say "yes" or "no" to. We immediately
166 made a survey of the outstanding debt which proved to be quite difficult because of the fact that we had considerable difficulty in locating the records of the original bond issues. When that information was assembed and the bond registers eventually balanced and we knew what was out and what was not out, a set of resolutions and companion papers was prepared authorizing the issuance of refunding bonds. Those resolutions disposed, to the best of our ability, of the complicated problem occasioned by the fact that the City had three tax zones. I remember considerable discussions and correspondence and I believe, personal visits, with the approving attorneys agreeing upon the method in which that could be handled satisfactorily—or to their satisfaction, and in a way we thought the Court would approve when those facts were known and as soon as they were known, we prepared a printed plan covering the refunding. It was not the plan of composition that you have there—it was an original prospectus of the refunding plan realized, without any idea that bankruptcy action would be necessary.

Q. About what time was that done, approximately?

A. Officially I would say October or November, 1937.

Q. It was a preliminary printed slip sent out?

A. Yes, and during the same period the papers authorizing the issuance of the refunding bonds were completed, submitted to the City Council, adopted by the City Council and the petition to validate the refunding bonds was filed. I believe that was in December of 1937, and allowing for the statutory period of notice, it was returnable to the last week in December or first week of January, 1938, and that is the period mentioned by Mr. Elwell. In the meantime the City government had changed and a new City Attorney came in and be-

fore the City felt disposed to proceed, they wanted to view the entire picture and that is when the conference took place in 1938, but so far as the bondholders themselves were concerned, the plan had been adopted.

Q. This information you gathered in respect
167 to bonds, etc., was after July, 1937?

A. Oh, yes.

Q. Didn't the original resolution provide in a general way for that?

A. It just stated the approximate debt outstanding.

Q. In other words, these figures and terms of refunding in the original resolution are not correct?

A. There were certain technical revisions; for instance, definitions of the bonds and possibly in amounts outstanding, to some small degree.

Q. But the general provisions of that contract have not been changed?

A. Oh, no.

Q. And before that time you had acquired this information subject to certain changes and corrections?

A. That is not true, Mr. Patterson.

Q. I am judging by information from the contract.

A. In the form it is there it can be obtained by the last audit of the City and you will find those figures were taken from the last audit of the City.

Q. It is subject to corrections and other information but the plan of the refunding, bond maturities and interest rates and details were set out in the contract of July, 1937?

A. Yes.

Q. And those are substantially in effect today?

A. That is right.

Q. The only difference, as I understand, is in the amounts of particular issues or variations in taxing districts?

A. That is right.

Q. Then, as I understand, all these services you performed were substantially completed, possibly with the exception of validation proceedings, before the meeting of the City Council?

A. Well, I would say that is far from true.

168 Q. Substantially?

A. Substantially is a matter of opinion.

Q. I don't mean to misrepresent. I understand getting this information (I assume other information came afterward), but getting information and getting up your plan for the refunding and drawing your resolutions and starting your validation proceedings and printing of bonds—all was completed along about January or February, 1938?

A. I beleieve that is substantially true.

Q. And the only question at that time was the question of final decree on the validation which was not complete?

A. Yes, sir.

Q. And that was all handled by your office under contract?

A. Yes.

Q. And your attorneys, of course, handled the validation proceedings?

A. They prepared papers and they were submitted to, examined by and approved by the Attorney for the City and the Council itself.

Q. This list of creditors attached to the petition as to ownership of bonds and coupons was the result of your investigations and efforts?

A. Yes, and they represent substantial services in trying to locate bondholders.

Q. And to those creditors you then submitted the printed plan of April, 1938?

A. This was sent to all those holders.

Q. Now, Mr. Lassiter, just in order to get the record clear, let's briefly review the plan. If you want to

answer, state it, and if I am wrong, you correct me. My understanding is that this plan is predicated upon
169 the list of bonds shown in this printed slip. Are there any changes in these amounts?

A. I think there have been some minor changes.

Q. I am not trying to mix you up, but those are the bonds and securities that are to be refunded under this proposed plan?

A. Yes.

Q. You do not include in there $25,000 of notes of the City owned by Rittenoure—they are not included in the plan?

A. No, sir.

Q. Do you know whether or not those have been reduced to judgment?

A. I do.

Q. Do you know about the date of the judgment?

A. I should say at least three or four years old.

Q. Was it before this plan was made up?

A. Yes, sir.

Q. Why were those omitted?

A. Well, there are several reasons why they were omitted. So far as I personally was concerned, I was not aware they had been omitted until last week when it was called to my attention following the hearing in Winter Haven. The reason it was eliminated is still a very sound reason and that is—

Q. This is not your reason?

A. So far as I personally am concerned, the reason it was eliminated by the office, in which I thoroughly concur, is that the notes issued were not subject to refunding by the type of bonds proposed to be issued.

Q. Those notes were in judgment?

A. They were.

Q. And there has been no appeal?

A. No, but they were apparently not a bonded
170 obligation and the people in Avon Park in 1929 or 1930 had voted against issuing bonds to re-

fund those notes and therefore, we did not believe it was possible to convert those notes into bonds contrary to the vote of the people of Avon Park.

Q. On page 11 of the petition is a list of judgment creditors and among them is listed two creditors I represent: American United Life and Mr. Sweet. Some of these judgments were entered in Federal Court and some in the State Court?

A. Yes, sir.

Q. You are more or less familiar with the names of them?

A. Yes, I am.

Q. Now, from the testimony offered here, a great many of those judgments have been purchased by either Crummer Company or Brown-Crummer. Which is it?

A. Either one. Some own one and some the other.

Q. The Rittenoure judgment was not purchased?

A. No, sir.

Q. The two represented by me have not been purchased?

A. No.

Q. Some of those judgments were purchased after you made your contract with the City, were they not?

A. Oh, yes.

Q. Now, the exhibit which you have attached, shows the ownership of a great many bonds and coupons by the Brown-Crummer Company and a great many owned by R. E. Crummer & Company that are not represented by judgments?

A. That is correct.

Q. Were they any substantial portion of those bonds owned prior to July, 1937?

A. Oh, yes. I should say that outside of these judgments, and even as to a substantial portion of the judgments, they were owned prior to execution of the contract.

Q. My question was directed to bonds par-
171 ticularly.

A. Yes, they were.

Q. A good many of those bonds listed and proved here in addition to judgments were purchased after the contract?

A. Not the bonds.

Q. You did not purchase any bonds?

A. I would not say none, but a very conservative estimate, not over 508% of bonds and coupons were purchased subsequent to the date of the execution of the contract.

Q. Have you purchased any coupons since your contract, separate from bonds?

A. I don't believe so. I don't recall any.

Q. And in buying any bonds since default of the town I suppose all bonds have been bought flat with coupons attached?

A. Most of them, I would say.

Q. So that the price of the coupons is really absorbed in the price of the bonds?

A. That is right.

Q. And all purchases since the town has been in default were purchased at less than par?

A. Naturally so.

Q. So coupons then would cost nothing when they purchased them unless you allocated a portion of the price of the bonds to the coupons?

A. That is correct except the statement is misleading, in that the bonds were purchased at certain prices for bonds plus so much for the coupons attached. There was an allowance made for coupons attached.

Q. So there was an allowance for coupons attached?

A. Yes, sir.

Q. Now, Mr. Lassiter, can you state whether any of these judgments on bonds were bought after bankruptcy proceedings were filed?

A. I don't believe any of them were. I won't state it as a positive fact, but I don't believe they were.

Q. Now, these creditors whose claims have
172 been prepared and filed and consents, did your office get most of those consents?

A. Only by the returns from the release of the plan and consents that came back to our Chicago office.

Q. You did not interview them personally?

A. Some of them were interviewed. Most of them had been interviewed under the original plan and this being merely a move to complete the original plan, by comparison, there was no particular need of it.

Q. Under Section 8 of the printed plan a charge of $20.00 a bond was made against each bondholder for the portion of the expense of carrying out the plan?

A. Yes.

Q. Can you state whether or not you know any of these creditors who have consented had that $20 remitted in order to get their consent?

A. I am positive none of them have.

Q. In other words, you testify positively all consents that are here are bound to pay the full amount agreed to in the plan?

A. Yes, sir.

Q. That also contemplates they will carry out the further provisions about the issuance of refunding bonds for interest, which are to be turned over to Crummer Company?

A. That is right.

Q. Now, the plan was altered within the last few months?

A. That is right.

Q. What was the effect of that change in a practical way on the original plan?

A. It only gave bondholders an added advantage, if they elected.

Q. Answer this way. Under the original plan, what was the provision with reference to the bondholders which was changed?

A. Under the original provisions the bond-
173 holder paid a charge of $20.00 per bond for exchange of his bonds for refunding bonds and delivered interest coupons to R. E. Crummer & Company upon the payment of 33-1/3 of the face amount thereof.

Q. He was required, under the plan, to deliver his coupons to Crummer & Company for 2%?

A. Yes.

Q. To July 1, 1937?

A. Yes.

Q. And pay $20.00 a bond?

A. That is correct.

Q. That has been changed and what is the present provision?

A. The present provision is that the interest coupons are placed in escrow in the First Nartional Bank of Chicago, or any other bank nominated by the Judge; the escrow to run for a period of two years and the bondholder is issued in lieu thereof a certificate of the First National Bank of Chicago evidencing the par amount of his interest claim. During the first six months after the issuance of that certificate the City collects certain funds and remits those funds to the First National Bank of Chicago and buys those claims at 50¢ on the dollar. For the next six months the funds are used to liquidate claims at 60¢ on the dollar; for the next six months to liqudiate them at 70¢; and the next six months, 75¢; but those funds are only remitted to the escrow agent if the City is unable to use those funds for the purchase of refunding bonds in circulation, at prices less than prices in this escrow.

Q. That was not in the original plan?

A. The companion features were in the original. This provision is inserted to put in legal form the plans that

had been contemplated in the original prospectus by voluntary consent, that is, that these items were to be made available to the City at an agreed price if the
174 City could raise the money and in the original it was their obligation to deliver to the City at agreed figures, as I recall.

Q. What was the approximate amount of the issue other than amount of coupons outstanding, which under the terms of the original agreement would have been refunded in interested bonds?

A. I believe the figure is stated at $358,000.

Q. And under the original plan there were about 800 and how many bonds?

A. Principal debt?

Q. Yes, approximately—

A. $865,000.

Q. And of that, Crummer interests owned about $300,000. There would be about $550,000 of bonds held by other persons who would pay $20.00 per head as part of the expense?

A. Accepting your figure as to the ownership of the Crummer interest—I don't have those figures.

Q. All that weren't owned by Crummer paid $20.00 a bond?

A. That is right.

Q. In addition to that, Crummer would proceed with $300,000 of bonds for which they would have paid to the other bondholders 2% in lieu of the 6% interest coupons?

A. Correct.

Q. So that the face value of the refunding bonds then would be worth $337,000 and would have cost Crummer approximately $110,000?

A. Approximately one-third of that figure.

Q. A paper profit, assuming the bonds are worth par?

A. So long as you use the word "paper" I will agree.

Q. Under the revised plan those interest refunding bonds of $337,000 will go to persons who own coupons if they so desire?

A. Yes.

175 Q. And they will all share alike in the moneys which are received by the Trustee?

A. Correct.

Q. Pro-rata?

A. Correct.

Q. If not paid off, everyone shares alike and takes a chance?

A. Yes.

Q. And in lieu of that, I understand, they can pay $40 a bond as part of the expense?

A. No, if they accept that they pay $40.00. They get just exactly what was provided by the original plan.

Q. And pay $40 instead of $20?

A. If that participates in the escrow.

Q. If they don't participate, they still have the option of going under the original plan?

A. Yes. In other words, every bondholder has two options: to obtain a speculative interest, if any, in the value of those claims and pay $40 per bond; or get cash at 33-1/3% and pay $20.00 per bond.

Q. And under the original agreement, he had no speculative interest and only paid $20.00?

A. Correct.

Q. That amendment was made about what time?

A. Within the last four or five weeks—February 23rd.

Q. After objections had been filed and this bankruptcy proceeding had been pending?

A. Yes.

Q. It was made because of Judge Holland's ruling?

A. Yes.

Q. Because he refused to approve the original plan?

A. Yes.

Q. Which embodied the same provision?

A. Yes, sir.

Q. Mr. Lassiter, in the list of judgments
176 shown there is no judgment shown here, so far as I recall, of the Brown-Crummer Company against Avon Park in their own name—is that correct?

A. Probably not.

Q. Did they institute any suit against Avon Park?

A. Only on behalf of clients.

Q. What was the name of the suit?

A. Meredith, possibly; or Meredith, Rogers and Martin.

Q. Instituted through your organization?

A. Yes.

Q. Against the City?

A. Yes.

Q. What year?

A. 1937, I believe.

Q. After your contract was made?

A. I believe it may have been pending before, but it may have been afterwards.

Q. Was that suit contested by the City?

A. It was to start off with, but the contest was abandoned.

Q. And they conceded? What was the result of that suit?

A. Special tax levy.

Q. Pursuant to writ of mandamus?

A. Yes.

Q. What year?

A. 1937-1938.

Q. Do you remember what the millage was?

A. 20 mills.

(Adjournment for lunch.)

Examination of Mr. Lassiter Resumed After Lunch.

By Mr. Patterson:

Q. Mr. Lassiter, with reference to the City of Avon Park generally, I assume you are in accord with the opin-

ion expressed by City officials that the City is
177 unable to pay its debts—or was unable to pay its debts at the time this petition was filed?

A. Unable to pay its debts as they mature—that is correct.

Q. Now, I assume also that in view of the fact that you have submitted this plan, you are of the opinion further that if this plan is carried out the City will be able to pay?

A. Yes, sir.

Q. They will be able to pay principal of bonds as well as interest, you think?

A. Not at par. It is not contemplated that it will be paid at par as now set forth.

Q. There is no provision for payment of less than that?

A. All over and above current interest rate—

Q. And you concur the market price will be less than par?

A. Yes.

Q. With reference to bonds issued for interest, there are certain six months provisions where it steps up from 50-75¢. After the expiration of that 24 months period what will the City do?

A. The City will issue bonds for the unliquidated amount of respective claims.

Q. At par?

A. Yes.

Q. And they will occupy the same classification as bonds issued the refunding bonds?

A. That is right.

Q. Have you any estimate of about how much money will be used in that redemption provision?

A. It is very speculative, Mr. Patterson. My
178 guess would be it would run not less than $30,000 and as high as $60,000. It is what somebody would guess as to how much.

Q. And the price the City will have to pay?

A. It will be governed by the month the money comes in.

Q. It depends also to some extent on how many people—

A. No, they will—

Q. As I understand, the option the bondholders have is to pay $20.00 a bond and turn coupons over to Crummer or pay $40.00 a bond and participate in the fund?

A. Yes, but in any event the coupons are disposed of.

Q. You don't think these bonds will be worth par when this refunding goes through?

A. Definitely not. No, sir.

Q. You cannot say what you think those bonds will be worth to the bondholder?

A. Personally, I think you can figure 50% of the par amount will prevail for some time.

Q. At least for that six months period?

A. Yes.

Q. But you are very definitely of the opinion the City will not be able to pay off these refunding bonds at par figures?

A. I don't say they could not pay them because over a period of thirty pears is too speculative, but the present plan does not contemplate they will be called on to do so.

Q. And that, I am sure, applies to the entire issue and not just to the part which is redeemable to that 24 months?

A. That is right.

Q. With reference to these judgments you bought, it appears that at least three of them were purchased after your contract was made ith the City. Did you buy those for yourself or the City?

A. For ourselves. The City had no money to
179 pay for them.

Q. But you didn't buy them for the account of the City?

A. Oh, no.

Q. And your intention was to realize as much for yourself as you could?

A. That is not the truth.

Q. You have an agreement with the City to refund its judgments at less than the plan?

A. No.

Q. Your intention is to refund the judgments under the plan?

A. Definitely.

Q. And realize as much as you can under the refunding plan?

A. Oh—under the refunding plan, yes.

Q. You bought them for yourself at less than the face amount, you stated a while ago?

A. Yes.

Q. What did you pay for these three judgments?

A. I cannot give you specific figures, Mr. Patterson. I presume I can get them from the Cashier's Department.

Q. It is not necessary, but it would be less than 50¢?

A. Some less, some more—within a range of an average of 50¢ would be an approximate figure. If I may make a statement, I don't think we would hesitate to sell anyone a joint account on them at our cost.

Q. Before we adjourned we discussed the writ or suit brought against the City of Avon Park by Gillespie, etc. I understood that was controlled by your firm?

A. Yes, sir.

Q. And they are officers or parties connected with Brown-Cummer or R. E. Cummer & Company?

180

A. Correct.

Q. What was that suit for? A writ of mandamus on judgment?

A. Writ of mandamus for taxes.

Q. When brought?

A. 1937.

Q. Before your contract or after?

A. I believe I stated I don't know if before or after, but consummated after.

Q. And you got a levy under that writ?

A. Yes, sir.

Q. Can you state whether or not there were any levies in 1937 pursuant to other writs?

A. I am positive there were not.

Q. Was that as a result of agreement with the City?

A. No. We asked them to comply with our writ.

Q. You did not advise them not to make a levy for other writs?

A. I certainly advised them if no other writs required them to make a levy, not to make them.

Q. And there was a levy made in 1938 for debt service?

A. Yes, sir.

Q. Was that made for any writs on judgments?

A. Exclusively for refunding bonds.

Q. And refunding bonds had not been issued?

A. No.

Q. Has any money collected under that levy made pursuant to the writ been turned over to the Crummer Company?

A. Not at all.

Q. It is held in the sinking fund?

A. An interest and sinking fund.

Q. Pursuant to the writ?

A. Yes.

181 Q. That money is not referred to in this refunding plan in any way that I know of. No reference made to that in the plan. Now, in the refunding plan, there is a list of bonds giving matured and unmatured, but there is no list of outstanding judgments. Why was that not included in the refunding plan?

A. Because the plan in the introduction, in the first paragraph, states that the plan considers the bonds or coupons whether in judgment or not and the bond represents judgments, but the judgments are in the schedules.

Q. In other words, bonds represented by judgments are included in bond schedules?

A. Yes, sir.

Q. What becomes of the other portion of the judgment?

A. Those are refunded as if no judgment had been entered.

Q. Any interest included in the judgment would not be considered?

A. Compound interest is not recognized.

Q. What about interest on judgments accrued on past due bonds?

A. Included.

Q. What becomes of Court costs in judgment?

A. Still answered by same thing—as if no judgment had been entered. Therefore, no allowance for Court costs.

Q. No provision in the plan taking care of difference between face of judgment and principal of bonds plus any interest on past due bonds and face of the coupons?

A. That is right.

Q. And under this plan all rights of judgment creditors as such will be wiped out—is that your understanding?

A. That is correct.

Q. You think that the balance of the judg-
182 ment will be canceled or satisfied, or how do you plan to eliminate that?

A. I don't know exactly what you mean by that.

Q. Let me illustrate. Take, for instance, suppose my judgment is based on face value of bonds and coupons of $5,000 and suppose there is $1,000 of past due interest

on coupons and interest which has accrued on the judgment since the date of the judgment and in addition to that, there is $15 or $20 of costs. How will you satisfy the balance of that judgment?

A. It would be eliminated completely.

Q. Would not receive anything for it?

A. No, sir. For the sake of the record, let's be sure we get this straight, that the bonds and coupons represented by judgments will be considered as subject to refunding under the plan as if no judgment had been entered and that in effect eliminates Court costs and compound interest because any other interest accrual is represented by interest coupons that will be attached to the refunding bonds.

Q. Just to make it clear in my mind, I want to be sure I understand the option which exists. The option is that each bondholder may accept the original plan which contemplates that he will pay $20 per bond and surrender his coupons up to July 1, 1937, to Crummer & Company at 33-1/3¢ on the dollar—that is correct, isn't it?

A. Yes.

Q. Or, he may keep his coupons and share in this special fund that is created for their retirement over a period of 24 months at varying rates and pay $40 a bond. Am I correct?

A. That is right.

Q. Then the compensation which the refunding agent will receive will depend on which option the bondholder takes. If under the first option, all bondholders surrender their coupons, I believe you testified a while ago, you would get $20 a bond on 50% or more of the bonds and all of the coupons, amounting to
183 $337,000, a portion of which are owned already by Crummer & Company. If all of them accepted the second proposition, you would get $40 a bond from 50-60% by bonds held by persons other than Crum-

mer and would not receive any of the coupons, except those which you already own, is that correct? If all went under one plan or the other, that would be the operation, is that correct?

A. I believe your statement is correct, except that in determining the charges imposed under the two options, due allowance has been made for the varying factors and it has appeared to us that they constitute practically an offset.

Q. It appears to Crummer & Company that you will get substantially the same amount of money out of the scheme any way it works out?

A. Correct, except not using the word "scheme".

Q. We will say "plan" if you prefer it that way. When you stated that the costs of these judgments to you was approximately within the range of 50¢, did you mean 50% of the face of the bonds included in the judgment or 50% of the face of the judgment?

A. Without referring to specific records, it would be my opinion that the average price of the judgments was the equivalent of 50% of the face amount of the bonds represented by the judgments.

Examination.

By Mr. Phillips:

Q. Mr. Lassiter, this plan that you are advocating is based upon the ability of the City to pay, is it not?

A. Within the ability of human beings to guess it, yes.

Q. That is upon its maximum ability to pay?

A. No, not upon its maximum ability to pay.

Q. Well, upon what ability, may we draw
184 the line?

A. We used one phrase in all operations in Florida which we consider is the proper one and that is, within the reasonable maximum ability to pay. Any at-

tempt to exhaust the last possible ability cannot help but avert and bondholders have never expressed the desire for that type of operation.

Q. And you think it is based upon the reasonable maximum ability to pay?

A. Yes.

Q. It could not within reason pay a larger amount?

A. Not expressed in percentages.

Q. You are aware that Lawrence W. Rittenoure has a judgment between $50,000 and $60,000 against the City and that included in that judgment is $25,000 of notes on which there has accrued possibly $10,000 to $15,000 of interest, which you say is not included in your plan?

A. That is right.

Q. You are familiar with the fact also that levies were imposed by the State and Federal Courts for the payment of those notes, are you not?

A. Yes, sir.

Q. And those levies have never been satisfied. In other words, the moneys ordered to be collected and paid on those notes has never been collected and paid?

A. Yes, sir.

Q. I presume that you contemplate also that Rittenoure will take further steps to procure payment of that indebtedness?

A. Yes.

Q. If, as you say, your present plan is predicated upon the reasonable maximum ability of the City to pay and if you have not made any provision in your plan for the payment of this indebtedness, how do you contemplate the City will take care of it?

185 A. In the first place, the reasonable maximum ability to pay applies to that tax levy and power that will be allocated to service these refunding bonds. We have anticipated its maximum ability to pay for other legal demands on the City; and furthermore, we have taken cognizance of the fact that

the notes of the Rittenoure Investment Company pledged a specific source of revenue in a particular year and it may not be a liability of the City to levy a tax for the retirement of the notes.

Q. You think your conclusion there would be justified in view of the fact that the notes have been reduced to judgment?

A. I cannot express a legal opinion on the rights of the Rittenoure judgment and the City, but I don't believe on a debt problem of one million some odd thousand dollars that the claim of $25,000 note issue would be serious enough to jeopardize the workability of the major program because I am aware of rules of Federal Court which permit spreading of levies over a reasonable time and I have no doubt any Court hearing right of parties would liquidate that judgment over a long period of time where it would not seriously affect the plan.

Q. You will realize on that judgment for $25,000—isn't there accrued on it some interest?

A. You also received some money.

Speaking in relative figures, I take the position which is founded upon very wide experience in this type of operation, that no plant of refunding is very sound if a difference of rights involving such a small percentage of the debt could seriously jeopardize the plan. It makes no difference when you say $25,000 or $50,000.

Q. You procured an injunction without notice to the Rittenoure Investment Company or us, as attorneys, enjoining us from proceeding to collect this $25,000
186 judgment based on notes. If, as you say, that amount is not involved in your plan, why would it be necessary to enjoin us from collecting it?

A. I am not familiar with legal procedure used in the injunction, but unfortunately, your judgment included not only notes but obligations that were affected by the plan.

Q. I will ask, in your opinion, then, if, as you say, our $25,000 of notes are not involved in your plan, any injunction issued against us or the Rittenoure Company from proceeding to collect that portion of the judgment should be dissolved.

A. I don't make that statement. I believe upon presentation of facts to the Court, the Court might take that into consideration, but immediate pressing of that claim, which is liquidated and bearing interest—the immediate pressing of that claim might embarrass the payable debt to make a complete adjustment of the debt structure—then, and in that event, I believe the Court would say we will hold that up. But any Court looking at the problem could not help but reach the conclusion that it had not prejudiced the rights of any creditor.

Q. You regard that portion of our claim, as you said a while ago, as a liquidated claim bearing interest? That is the portion of the judgment based on $25,000 of notes?

A. That is right.

Q. And you anticipate that it will be taken care of in some way as an additional obligation to the obligation set forth in the plan?

A. That is a matter purely between the City and the holder of that judgment.

Q. And I gather from your general remarks that if an attempt to collect it tentatively might jeopardize your plan, you know of no reason why the injunction should not be dissolved proportionately?

A. I believe that is a reasonable conclusion.

187 Examination.

By Mr. Thompson:

Q. With reference to this Meredith levy, do you recall what time that levy was spead?

A. Over what period of time?

Q. When was this writ served on Avon Park?

A. October, 1937—perhaps September.

Q. Did you testify that you instructed the town not to make that levy if other levies were pending at that time or if other writs had been issued?

A. No, what I testified—I stated that I only gave the town what I consider sound fiscal advice, that under the circumstances they were involved in, they should comply with any writs against them and it was my understanding there were no writs then in existence which required a levy of taxes.

Q. Didn't you know a peremptory writ of mandamus was entered July 13, 1936, and served August 4, 1936, on the entire Rittenoure judgment?

A. I knew a writ had been served. The terms of it I did not know. I have never seen the writ. To clarify the record, I could make comments. I was advised from all records I had available that the writ when issued required the performance of a particular duty and I understand that duty was performed and there was some discussion as to whether it did not have other terms, but I say now, the writ can speak for itself as to whether the City performed under the writ or not. I gave no advice as to whether the City had further responsibility under the writ.

Examination.

By Mr. Phillips:

Q. Mr. Lassiter, you have been working with this Avon Park problem for a number of years, have you not?

A. Yes, sir.

Q. And you are familiar with the methods
188 that they used down there in tax collections and their efforts to meet the bonded indebtedness?

A. I am familiar generally with their process.

Q. Do you know that for quite a while they adopted a policy down there of refusing to pay anything on interest by limiting their payments entirely to principal? In other words, if they collected $1,000 in taxes and you went in there with $500.00 of coupons and said, "I want the coupons paid", they would say, "No, I won't pay that, I will only pay principal"—are you familiar with that procedure?

A. I am not familiar with the specific procedure but I am familiar with the fact that for eight years neither I nor anyone else could get coupons paid.

Q. You know when Miss Brown was City Clerk she took the position she did not have to pay interest on interest and therefore she would not pay interest and paid only principal?

A. Principal for interest or bonds?

Q. Bonds?

A. No.

Q. But you did know you could not collect coupons?

A. Yes, I knew we could not get them to pay them.

Q. Were you familiar with the practice they had down there of allocating into two classes the tax levy and allocating a portion of it for operating expenses and another portion for debt service?

A. I am familiar with that.

Q. Don't you know as a matter of fact they encouraged taxpayers to pay the portion to be collected for operating purposes and discouraged them to pay the portion for bond service?

A. I am familiar.

Q. That is a fact?

A. Yes.

Q. You are also familiar with the fact that what moneys they did collect for debt service was largely transferred to the operating fund and was used for operating purposes?

A. No, sir.

189 Q. Don't you know they did that to some extent?

A. My records don't disclose that fact. I tried to prove it one time.

Q. You suspected it?

A. Yes.

Q. From your acticities down there in the last several years, you really don't believe the City of Avon Park ever made a bona fide effort to meet its bonded indebtedness do you?

A. I will answer, if I will be permitted to explain, in this way: I don't think Avon Park or any other town in Florida made any serious effort to collect taxes after they were in serious default. I think they did what they considered the best they could, and as bondholders' representatives, we do not like it and we still do not like it, but it was the thing that forced finally the consideration of the problem before us—an adjustment to erase those difficulties and you know as I do the Legislature of the State of Florida adopted that as a policy by authorizing the collection of operating separate from debt service.

Q. That law was declared unconstitutional?

A. Yes.

Q. Don't you know they had permitted to remain in abeyance for ten years without prosecuting it, a quo warranto proceedings to determine the limits of the City of Avon Park?

A. I don't believe it has been permitted—I cannot see that is material.

Q. You know that case has been pending about ten years?

A. I do.

Q. And the ability of the City to pay would depend a great deal on the extent of its bounds?

A. Not at all. These bonds are validated and definitely contracted the levy of taxes in two separate zones completely disregarding the quo warranto action and those questions were raised and adjudicated.

Q. The property in the outer limits, those you
190 sought to get out of the City Limits, were proceedings under the assumption they would not have to pay these bonds, were they not?

A. I don't know if they were particular interested in the bonds. I am rather convinced from conversations we had with people that they are satisfied for that suit to rest because they are convinced their problem comes within the scope of the litigation of Winter Haven and Ocoee where the outlying territory was established.

Q. Why have they permitted it to remain in that state of inactivity for the last five to ten years—do you know?

A. No.

Examination.

By Mr. Crittenden:

Q. Mr. Lassiter, the Directors of the R. E. Crummer & Company and Brown-Crummer Investment Company are the same, are they not—or practically so?

A. No.

Q. Have they been in the past?

A. No, I don't believe so. There has been, I believe I would be safe in saying, there has been a majority of the Board of both corporations that would be identical. If it will answer your question sufficiently for the record, the control of the two corporations rested in the same persons.

Q. R. E. Crummer is President of both corporations?

A. Yes.

Q. And still is now?

A. Yes.

Examination.

By Mr. Patterson:

Q. Mr. Lassiter, you testified that it is not the assumption under this plan that the City would pay these bonds off at par, is that correct?

A. Yes.

Q. In other words, if they had to pay this
191 whole $1,100,000 at par with accrued interest, you don't think they would be able to pay it?

A. I doubt, in view of present plans.

Q. And the success of this plan is dependent upon the ability to buy in these bonds at reduced values through a period of years both through the escrow fund and other sources?

A. That is right.

Examination.

By Special Master:

Q. Which Crummer Company entered into the contract with the City of Avon Park?

A. R. E. Crummer & Company.

Q. Did that contract designate R. E. Crummer & Company as fiscal agents for the City of Avon Park for the purpose of bringing about this refunding or composition?

A. Yes, sir.

Q. In the plan or contract is there any provision that the City of Avon Park pay any part or portion of the refunding, including fiscal agent, bankruptcy proceedings or otherwise?

A. No.

Q. Does the plan contemplate that R. E. Crummer & Company pay all costs of the refunding and of the bankruptcy proceedings?

A. That is not definitely stated in the contract by use of the words "bankruptcy proceedings", but it is definitely contemplated by the contract.

Q. Is there any agreement between R. E. Crummer & Company and officials of the City of Avon Park that the City in any way compensate R. E. Crummer & Company?

A. No, sir.

Q. Have all the expenses or costs incident to the City of Avon Park, if any, been fully disclosed in this plan?

A. Yes, sir.

Q. There is no portion of the costs or pro-
192 ceedings here to be paid by the City of Avon Park?

A. No, sir.

Q. The compensation provided in the plan for R. E. Crummer & Company includes all of their work and expenses incident to bring the plan about and bring it into fruition, is that correct?

A. Correct.

Examination.

By Mr. Patterson:

Q. You say there is no agreement the City will pay R. E. Crummer & Company any compensation for this plan?

A. That is right.

Q. Won't the City have to pay for all of the bonds and coupons Crummer has and gets under the plan?

A. If you want to consider that as compensation.

Q. These coupons that are turned over to you at 2% will be paid at whatever price Crummer would sell them to the City at?

A. Yes.

Q. So, if they sold at 50% on the dollar, you would have 50% on those coupons turned over to you which costs you nothing?

A. They don't cost us nothing. If a bondholder turns them over to us we pay him 33-1/3¢.

Q. All right, but if you cash them at 50¢ you make something?

A. Yes, but if the market is 10¢ we would make less than cost.

Q. And if you sold them at 66 you would make 100% profit on those coupons?

A. Except the use of the word "profit" because there are costs charged against it.

Q. Does the City not agree to reimburse
193 Crummer for these bonds?

A. Not the slightest, if my interpretation of the act is correct. If you want to infer because a bondholder elects to sell his coupons to us at 33-1/3 and we sell them at 50, if we could sell them to an outsider, that would not be compensation.

Q. The question I asked was—was there any agreement to reimburse the costs and expenses of the City?

A. No.

Q. In other words, you expect to make your compensation principally out of the bondholders in the record through bonds and coupons?

A. Out of fee collected from bondholders, or profit or loss, if any, in purchase of securities.

Cross Examination.

By Mr. Pleus:

Q. Mr. Lassiter, what is your official position with R. E. Crummer & Company?

A. Vice-President.

Q. How long has Brown-Crummer Investment Company and R. E. Crummer & Company been associated with this debt problem in Florida?

A. Since the time of the original issue of bonds in 1924.

Q. When was R. E. Crummer & Company formed?

A. April, 1934.

Q. What was its primary purpose?

A. It was organized almost exclusively for the purpose of representing the clients of Brown-Crummer Company who had purchased bonds in Florida that were then in default in substantial amounts and because the stock ownership of Brown-Crummer Company was not unanimously of the opinion that the capital of the company should be risked in what was then thought to be an unprofitable operation.

194 Q. What is the scope of the operations and experience of you and your company in primarily the readjustment of the bonded indebtedness of Florida taxing units?

A. Beginning with an organization of two in 1931 and building up to an organization now of more than 35 people working constantly on nothing but debt adjustment problems, we have handled or are now in process of handling the debt problems of more than 200 taxing units which owe an aggregate debt of more than $130,000,000.

Q. Now, are the answers you have given to the questions that have been propounded to you been based upon this experience?

A. They were.

Q. And based upon that experience, it is your opinion and the opinion of R. E. Crummer & Company as fiscal agent that the plan of composition involved in these proceedings represents the maximum reasonable ability of the City of Avon Park to meet the indebtedness proposed to be refunded?

A. That is correct.

Q. Now, your original contract with the City of Avon Park was dated July 17, 1937.

Mr. Patterson:

I object to Mr. Pleus examining the witness unless he states in what capacity he appears.

Examination of Mr. Pleus.

By Mr. Patterson:

Q. Are you representing Crummer in this proceedings as agent of the City or creditor.

A. I am neither agent or creditor of the City. I am attorney for R. E. Crummer and Company and in such capacity I am representing them in this proceedings as a matter of record.

Q. I submit that R. E. Crummer & Company is a claimant and as such as the same standing I have as creditor.

Special Master:

State your capacity for appearing and I will rule on the objection.

195 A. My client appears as both fiscal agent and as a creditor as the record discloses. My client has been summoned or his testimony and evidence have been tendered and the cross examination is now made on the basis of direct examination of that client. The capacity in which that client was examined is a matter of record and so long as cross examination goes no further than direct examination, then I can see no objection.

Mr. Patterson:

I have no objection if he will state in what capacity he appears.

A. I am representing R. E. Crummer & Company in the capacity both as fiscal agent and as creditor of Avon Park.

Objection overruled.

Cross Examination of Mr. Lassiter Continued.

By Mr. Pleus:

Q. The original contract between the City of Avon Park and R. E. Crummer and Company was under date of July 17, 1937. Were bankruptcy proceedings contemplated at that time?

A. No. There was no bankruptcy act.

Q. The original act had been declared unconstitutional?

A. That is right.

Q. The contract contemplated a voluntary exchange?

A. Yes.

Q. And the provisions and terms thereof were with reference to a voluntary exchange?

A. That is right.

Q. Following the entry into that contract, R. E. Crummer & Company proceeded to perform it by contacting bondholders, securing their consents to the plan of refunding and supervising the issuance and validation of refunding bonds?

A. That is correct.

Q. This bankruptcy act, under which we are now proceeding, was enacting August 16, 1937, and following that was it determined necessary to revoke its provisions?

A. Not immediately.

196 Q. How soon?

A. Not until some time in 1938.

Q. Why was it found necessary?

A. Because of the objection of certain litigation creditors to acceptance of the voluntary plan.

Q. Those creditors seeking a preferential right or status?

A. Yes.

Q. Which they refused to voluntarily give up?

A. That is right.

Mr. Patterson:

I object to it being a conclusion of witness.

Objection overruled.

Q. Did you have any correspondence with these creditors objecting prior to the time bankruptcy proceedings were revoked?

A. Yes, sir.

Q. Which ones?

A. I think we have had correspondence with all of them either direct or through counsel—Lawrence W. Rittenoure, Roger W. Babson, William E. Sweet, American United Life Insurance Company, then the United Mutual Life Insurance Company. I believe they are principal objectors.

Q. Did you have any correspondence or dealings or relations with those creditors prior to the contract or announcement of the original plan?

A. Some of them.

Q. Which ones?

A. American United Life Insurance Company and William E. Sweet.

Q. What was the nature of that correspondence?

A. With reference to the American United Life Insurance Company, we were corresponding on the theory that the past negotiations between ourselves and the City of Avon Park, which were constantly reported to a representative of American United Life Insur-

197 ance Company, were in accord with the objectives of this institution as one of the creditors

of the City. We were asking them to consent to the voluntary plan of composition and we thought they were in accord with it.

Q. What about William E. Sweet—along the same line?

A. We had not very much correspondence with Mr. Sweet specifically regarding Avon Park but his attitude toward us for many years in the past and the comments we had exchanged about Avon Park up to that time led us to believe he was not in disagreement with the objectives we sought to accomplish and finally wound up with Mr. Sweet expressing an objection to the plan of refunding and asking if we would not purchase his judgment.

Q. He attempted to procure the purchase of his judgment by you or your company?

A. Yes, sir.

Q. Now, the modified plan was proposed February 23rd, 1939. Why was that done?

A. Purely to correct certain technical phases that had developed in the Vero Beach plan of bankruptcy. We having readily admitted that there being no precedent for this type of operation, that certain final changes would have to be made from time to time and the minute we had a ruling on the Vero Beach matter, we initiated moves to correct this, primarily concerning ourselves with the problem of handling interest adjustments because in the Vero Beach plan we had merely adopted verbatim the voluntary plan submitted and that called for handling interest adjustment claims by issuing $1,000 denomination bonds in $1,000 denominations and a voluntary purchase or sale of odd amounts and fortunately the Court was inclined to the view that if it only effected no charge, that the sale of one bondholder to another bondholder could not be coerced and suggested early in the hearings a modification made in that matter, later confirmed and then transferred to the Avon Park plan practically verbatim.

Q. What is the theory of providing for the escrow of the interest adjustment items to be used as

198 provided in the modified plan over a period of time for purchase at set figures?

A. Unfortunately, laymen not familiar with the fact that bonds sell in relation to each other and that the general market determines the price at which any particular security will sell in relation to the other, and the City officials in Avon Park were quite concerned that there might be a controlled market that would not permit them to retire their debts at anything less than par. A controlled market is impossible and we knew that to be true, but the City officials of the City, even those now present who considered this plan before January 1, 1938, wanted some assurance that if they could stimulate their tax collections in Avon Park, they would have ability to retire their debt at something less than the par amount of securities. The plan merely set an estimate of what is a very high estimated value of the bonds at some future date and only guarantees to the City that there can not be a controlled market above that figure. The City has the privilege of buying bonds at 10c if they can get them, or 40c, but they know they can buy them at not exceeding 50c for a period of time because of the limitation for the future. It was our view, concurred in with those we consulted, and proved by experience, that an ability to retire bonds at a price with current valuation instituted a real incentive for public officials to go out and encourage payment of taxes.

Q. Primarily delinquent taxes?

A. Yes.

Q. Then it was an offset to the delinquent tax roll with the incentive to use those for a purchase of less than par?

A. It was considered if the City of Avon Park could go to the people and say "we have an option on these bonds for a defined period of time at a specific
199 maximum price" that their ability to put patriotic pressure on the people to do today what they

might do six months or a year later was justified from a bondholder's viewpoint.

Q. Have there been any extra costs on R. E. Crummer & Company because of the necessity of this bankruptcy proceeding?

A. Tremendous.

Q. Has there been any additional charge made on that account?

A. No, sir.

Q. Why was it you set 33-1/3% of interest accruals as the purchase price of interest items under your original plan, which is the option that is still given to the bondholders?

A. Because at that time bondholders that were working with us and consulting with us in the development of the plan reasonably considered 2% interest rate on the City was a fair rate. We had demands of different types of creditors and the City had demands of different types of creditors, the City wanting a guaranteed policy for the use of their surplus funds. The bondholders largely preferred cash for interest claims. At that time the original proposal was made and I believe still today, the price of 33-1/3% cash for the coupons is as much as anybody could get out of an equivalent claim against the City of Avon Park. Today, if you took the quoted price of Avon Park bonds, the principal, and added interest total and reduced it to a dollar principal par value by applying the flat price for the total against the aggregate claim, you would arrive at a figure not sufficiently different from 33-1/3¢ on a dollar to justify any material argument.

Q. Now, Mr. Lassiter, in approaching the problem of this sort, such as your debt in Avon Park, do you go there as a representative of bondholders or of whom?

A. We go there definitely as a representative of bondholders.

Q. Very frequently following litigation on be-
200 half of bondholders to enforce their claim?

A. Yes, sir.

Q. There is no misrepresentation of your status?

A. We never pretend to represent a taxing unit until terms satisfactory to bondholders we represent have been agreed upon.

Q. And at that time you consider an identity of interests between the taxing unit and holders you represent?

A. Yes, sir.

Q. This Meredith, Rogers and Martin writ in Circuit Court of Highlands County, resulted in a peremptory writ, did it not?

A. Yes, sir.

Q. Pursuant to that writ a tax levy was made of how many mills and in what year?

A. 20 mills on Zone "A" and 12 mills on Zones "B" and "C" in the year 1937.

Q. Have any moneys resulted from that levy?

A. Moneys have resulted but Meredith, Rogers & Martin have not collected $1.00 of it.

Q. What is going to be done with that?

A. That money is to be used by the City of Avon Park in meeting the first year's appropriation for sinking fund under the refunding plan, notwithstanding the fact that Meredith, Rogers & Martin have legal right to the money. They are waiving it in for favor of creditors as a whole.

Q. In other words, you have not used your contract with the City of Avon Park to personally benefit Meredith, Rogers & Martin or any other customers you represent?

A. Not to the extent of $1.00.

Q. Have the refunding bonds in contemplation been authorized and validated?

A. They have.

Q. In regard to judgment creditors, the plan
201 proposes that judgments shall be refunded just the same as if no judgments had been entered—is that correct?

A. That is correct.

Q. What differental is there between the holder of a judgment and that same individual had he held only the securities involved in that judgment? In other words, what rights would he lose?

A. He, in my judgment, loses no rights, because every other bondholder could put himself in an identical position with a minimum of effort and cost. The holder of a judgment is in exactly the same position as the holder of equivelant securities without a judgment in so far as legal right is concerned. One has merely evidenced it by a judgment—the other has not.

Q. In that judgment there will have been interest accrued on the past due bonds from the date of maturity to the date of judgment and interest on that portion of the judgment represented thereby to the date of exchange or date of July 1, 1937, in this instance. What of that will he have to relinquish?

A. Only the interst that represents interest upon interest itself. The compound interest figure.

Q. The same is true with reference to coupons?

A. That is right.

Q. This $20.00 charge in the instance of the first option and $40.00 charge in the instance of the other option is based on what as between bonds and coupons? Is it $20.00 on the coupons?

A. Only $20.00 on the principal debt, the bonds themselves, and $40.00 on the bonds themselves.

Q. In other words, there is no charge whatsoever based upon the refund of the interest liability?

A. Correct.

Q. Whether it is represented by coupons or
202 interest on past due bonds?

A. Correct.

Q. The charge is based solely upon principal debt that shall be refunded?

A. That is right.

Q. Do you recall what year's collections were allowed on debt service taxes or operating taxes separately without paying the other?

A. I can not say positively, but I believe that continued rather consistently from the time of Mr. Rittenour's first suit in 1930 until 1937.

Q. Was any such thing done after your contract with the City?

A. Not to my knowledge.

Q. That was a rather general practice under that statute enacted, before it was declared unconstitutional, in any taxing units, was it not?

A. Oh, yes. Unless injunctions were brought to stop it.

Q. You stated that the 1938 tax levy was solely for the refunding bonds and that such bonds had not been actually issued—that is correct?

A. That is correct.

Q. However, those had been authorized and validated and were ready for issuance?

A. That is correct.

Q. And it was contemplated that prior to the end of the fiscal year for which the levy was made the exchange would take place and the moneys remain applicable to refunding bonds?

A. Correct, and in addition, it was made under provisions of the original order in bankruptcy in this matter authorizing putting the plan temporarily into effect.

Q. Mr. Lassiter, why did R. E. Crummer &
203 Company or Brown-Crummer Investment Company buy these judgments?

A. The judgments were the legal representation of the debt which had been largely embarrassing the City by mandamus actions to compel high tax levies that the people of Avon Park apparently either could not or would not pay. The discussions came at a time when bankruptcy was not contemplated and it appeared to us that one of the best

ways to assist in the accomplishment of the results sought was to purchase those judgments if they could be purchased at any reasonable figure and they were purchased for that purpose and that purpose only. The price was, in most cases, higher than the then current price for bonds themselves but notwithstanding that fact, they are handled under the plan of bankruptcy as if no judgment had been entered.

Q. Were they freely floating assignable obligations that anybody could have bought?

A. Anybody could have bought them.

Q. Any or every one of them either of these companies own are consenting to the plan?

A. Every one.

Re-Direct Examination.

By Mr. Patterson:

Q. First of all, Mr. Lassiter, with reference to the bonds of Avon Park you said you represented and that the City knew you represented, there are three proofs of claim of bonds owned by Brown-Crummer and R. E. Crummer & Company, were those bonds owned by those corporations or do they merely represent them?

A. I am sure they own them, Mr. Patterson.

Q. In other words, you don't know of your own knowledge?

A. I don't because there are so many transactions.

Q. The Brown-Crummer Investment proof shows $146,000 par value of bonds owned by them, exclusive of coupons or interest, and a small one and R. E. Crummer & Company, $95,000—do you know about them?

204 A. Yes. I hate to say positively. We handle too many transactions to remember the details, but I would say they do own them. I recall purchases.

Q. These are not just bonds you represent?

A. No.

Q. The proof of claim says you own them.

A. That is correct.

Q. So when you said you represent bondholders, you meant represent your bonds?

A. I think you will find they were not purchased until after the contract was signed.

Q. Which one?

A. Either one. I could not say positively. You can refer to the date of the assignment.

Q. These are not judgments. These are separate from judgments.

A. We did own bonds prior to the execution of the contract, Mr. Patterson.

Q. What I was asking was first of all, whether you knew that Brown-Crummer owned the $146,000 of bonds and Crummer owned $95,000, filed here with proof of claim.

A. Prior to a certain time?

Q. Whether they own them now.

A. Sure.

Q. And you say they were purchased after the contract was signed?

A. Either that or about the same time.

Q. Both companies?

A. Yes.

Q. So that at the time you went down there before the contract was signed, you were really representing the bonds and had not purchased all of them?

A. Probably not all of them.

Q. And you were representing other bond-
205 holders as you said your organized R. E. Crummer & Company to represent bonds of Brown-Crummer Investment Company?

A. Clients of Brown-Crummer Investment Company.

Q. In talking about expense of bankruptcy proceedings, there is nothing in the contract to obligate Brown-Crummer to pay the expense, is there?

A. Only, I believe if you will refer to Item E of Section 7.

Q. "All other expenses in connection with the refunding which may be approved by said R. E. Crummer & Company"?

A. Yes, sir. That is copied from the contract of July, 1937 and Item E of that contract provided accordingly.

Q. In other words, it was up to you to approve that?

A. Yes, sir.

Q. With reference to the use of the interest bonds, you testified in response to Mr. Pleu's questions that they were to be used by tax payers in settling delinquent taxes?

A. It has that ultimate effect, Mr. Patterson.

Q. Didn't you say it was the reason for fixing the 50% and so on percentages?

A. Yes, but it was to guarantee the City when they collect the taxes the taves will result in the liquidation of a substitantial portion of the debt.

Q. You will allow the tax payers to use them at reduced prices?

A. I don't think it is contemplated. I think the City will appraise those properties and collect the taxes and with the money received will purchase bonds at given prices.

Q. What I want to know—my understanding was that the City would be able to buy those from the Trustee at fixed prices, using the surplus revenues over and above your amount necessary to pay coupons?

A. Yes.

Q. But I got the impression that the question
206 of delinquent taxes was involved.

A. Delinquent taxes would constitute the source from which surplus would be realized.

Q. In collecting delinquent taxes, they could or could not utilize these refunding bonds held by the Trustee?

A. I don't believe they could use those at all direct, Mr. Patterson. The City collects the taxes and the City buys it and the tax payer gets the benefit.

Q. So the delinquent tax proposition is not involved?

A. Only, if you will refer to my testimony, the psychological effect to satisfy the City officials that they may retire the debt at guaranteed prices.

Re-Cross Examination.

By Mr. Pleus:

Q. Mr. Lassiter, did any of these objecting creditors, those who are now objecting, collaborate with you or your company in working out the original plan of refunding?

A. Yes.

Q. Which ones?

A. American United Life Insurance Company.

Q. To what extent?

A. I believe I am safe in stating that either one or two representatives of American United Life Insurance Company called at our office an aggregate of 15 or 20 times to discuss developing a plan of refunding in Avon Park. I attended meetings of the City Council and, I personally did either by myself or with other representatives of the company, on at least two occasions that I can remember, when the discussions were limited exclusively to an effort to develop a plan of refunding and the terms that the City had proposed through other sources where objectionable to bondholders present and representatives of American United Life supported very admirably our request for a modification of those terms and the terms that were indorsed for adoption by the City of Avon Park six or eight months before the date the contracts were
207 signed were almost identical with the terms of the contract.

Examination.

By Mr. Patterson:

Q. Who was the representative?

A. Harry B. Wilson, present in this room, called at my office and during Mr. Wilson's absence, D. A. W. Bangs.

Re-Cross Examination Resumed.

By Mr. Pleus:

Q. What was his capacity?

A. At that time he was acting as Florida representative. Now he is in the home office at Indianapolis, investment Division.

Examination.

By Special Master:

Q. Mr. Lassiter, you have testified to a wide experience in the matter of bond refunding or compositions of indebtedness of municipalities. Are you also familiar with the economic situation in Florida following the collapse of the Florida boom?

A. Very familiar, sir.

Q. Are you familiar with the economic condition generally following the collapse or break down or National panic following 1929?

A. I try to keep generally posted.

Q. In the matter of refunding or composition of debts of municipalities, about how many plans of refunding or composition have you had to deal with, approximately, and about how many years' experience have you had?

A. My first experience with this work was in watching municipal affairs of the City of Miami as Police Reporter in 1926. Then later, the municipal affairs of the City of DeLand while I was completing law education there. In 1928, before the public at large had any idea there was any

difficulty with debt problems in Florida, I made an intimate county-by-county, issue by issue, analysis of 21 counties of Florida. The original records of which
208 analysis are still available. As a result of which, we exposed a gradual weakening of the tax structure of Florida before the average person was aware of conditions. From 1929 until 1932 the primary problem in Florida was in collecting coupons, that is all. I mean getting in an automobile and trying to whip a few dollars out of a particular situation, and Avon Park was one. From 1932 to today I have not spent 2% of my time doing anything but working on problems exactly like Avon Park. 200 taxing units have had their affairs handled through our office.

Q. Have you computed or do you know what percentage of the total indebtedness of the City of Avon Park as represented in this plan are objecting to the plan?

A. I understand approximately 31% have not consented formally. So far as objections are concerned, I can not say, but I imagine about 10%.

Q. Mr. Lassiter, you are familiar with every detail of this plan of composition or refunding as proposed by the City of Avon Park?

A. Yes, sir.

Q. Do you consider it fair and equitable?

A. Yes, sir.

Q. Is it for the best interest of creditors?

A. Yes, sir.

Q. Does it discriminate unfairly in favor of any creditor or class of creditors?

A. No, sir.

Q. Was the plan of composition offered in good faith?

A. It was, sir.

Q. Do you know whether or not the acceptance, so far as you are familiar with them of the plan, were in good faith?

A. Yes, sir.

By Mr. Patterson:

Q. Mr. Lassiter, United Mutual never did accept this plan of refunding, did they?

A. No, sir.

Q. And those conversations were just preliminary conversations?

A. Yes, sir—in the interest of clarifying, may I make two statements? With relation to the development of a debt problem in Florida, we have never yet, with one exception, asked a bondholder in advance to execute any authority to us, giving us any authority to do anything. We have taken all of the risk of the development of the plan based upon information.

Mr. Patterson:

I object to answer of witness.

Objection sustained—counsel has right to object to voluntary statement.

Re-Cross Examination.

By Mr. Pleus:

Q. Mr. Lassiter, Mr. Patterson asked with reference to American United Mutual whether or not it had ever accepted the plan or consented to it. Your answer was "no", which with the further explanation might appear contrary to the statement previously made to the effect that this company had collaborated with you in working this problem out. Would you explain that to the Court by showing the method that is used in approaching a problem of this kind?

Mr. Patterson:

I object.

Objection overruled.

A. We have always proceeded on the theory that a fair plan of composition would be acceptable to owners of a majority of the bonds and we had never, with one exception, asked bondholders to give prior consent to any plan, the final terms of which could not be known in advance, and we have taken the normal risk of developing a plan based upon informal discussions in the hope that approval would be obtained.

210 Mr. Patterson:
I object—I don't see materiality.

Objection sustained.

Q. Tie it in definitely, Mr. Lassiter, to the fact that this same method was used with reference to the American United Mutual.

Mr. Patterson:
I object.

Objection overruled.

A. I have answered that American United Life did not consent to the plan of refunding which is the basis for this bankruptcy act. We do not know why that consent has not been forthcoming as we were proceeding on the theory that the plan as defined conformed to preliminary informal discussions.

Examination.

By Special Master:
Q. Did it conform generally to informal discussions?
A. So far as I know—we know of no variation.

Re-Direct Examination.

By Mr. Patterson:

Q. You don't mean to say there was any misrepresentation or anything of that kind?

A. Not the slightest.

Q. You don't charge them with any bad—

A. No.

Q. You don't know why?

A. We just don't know why the plan, which was developed, we thought, in accordance with the understanding, has not been accepted.

Mr. Thompson:

At this time I wish to file a Motion of Lawrence W. Rittenoure to be considered in this matter by the Court.

211 Mr. Crittenden:

If the Court please, I want to offer in evidence the Judgment and Peremptory Writ of Mandamus attached to the Objection to the Plan of Composition filed herein by Roger W. Babson on October 14, 1938. Received and marked Exhibits "C" and "D" of Roger W. Babson.

Mr. Thompson:

Lawrence W. Rittenoure is filing his exhibit attached to Objections and Exceptions to Petition which is copy of peremptory writ of mandamus and no objection was made to filing. Marked Exhibit "A" of Lawrence W. Rittenoure.

Objectors rest. Both sides having announced the closing of testimony, it is considered closed this 22nd day of March, A. D. 1939.

ALLEN E. WALKER,
Special Master.

212 On March 31, 1939, the Special Master filed his Report, said report being in words and form as follows:

SPECIAL MASTER'S REPORT.

213 (Title Omitted.)

To the Honorable Alexander Akerman, Judge of the above styled Court:

The undersigned, Allen E. Walker, as Special Master herein under and by virtue of orders of appointment made and entered by the Honorable Alexander Akerman, Judge of the United States District Court for the Southern District of Florida, hereby reports to the Court, in accordance with the said orders of the Court, as follows: That on the 15th day of August, A. D. 1938 an order or decree was entered by the Court approving the Petition of the City of Avon Park, Florida as properly filed and providing that claims be filed with the undersigned Special Master and a Preliminary Report of Claims filed with the Special Master was filed with the Clerk under date of October 31, 1938, pursuant to said order; that the time limit for filing claims with the Special Master was continued from time to time by order of the Court and the Special Master filed a Supplemental Report of Claims Filed under date of January 3, 1939.

That on the 31st day of October, A. D. 1938, the Court entered an order referring this cause to the undersigned Special Master for the purpose of taking testimony and making findings of fact and conclusions of law, as is provided in said order. Pursuant to said order, notice of a hearing to be held at 225-6 Beymer Building in the City of Winter Haven, Florida, on the 16th day of March, A.

D. 1939 was mailed to all creditors of the City of
214 Avon Park, Florida on the 3rd day of March, A. D. 1939; and the time for taking testimony and making findings as aforesaid was continued by order of the Court to April 3, 1939; and accordingly a hearing was held on the 16th day of March, 1939 for the purpose of taking and considering testimony and reporting upon the matters and special issues set forth in the said Order of October 31, 1938, which said hearing was continued to March 22, 1939, same being held in the Assembly Room, Third Floor of the Court House, in Orlando, Florida. At the hearing held March 22, 1939, Counsel representing the Petitioner and Objectors announced the closing of testimony and waived argument before the Special Master, all parties reserving the right to file written briefs with the Special Master. That said hearings were held at Room 225-6 Beymer Building, Winter Haven, Florida and Assembly Room, Third Floor of the Court House, Orlando, Florida, respectively, and that at said hearings the said Municipal Debtor, the City of Avon Park, Florida, was represented by its officers and by its attorneys, Henry L. Jollay and T. A. McNicholas. Objections had previously been filed by Touchton & Crittenden, representing Roger W. Babson; Phillips & Thompson, representing Lawrence W. Rittenoure; Smith Brothers, of Clay Center, Kansas; and Giles J. Patterson, representing William E. Sweet and American United Life Insurance Company; and that all of said objections and pleadings filed as aforesaid were carefully considered by the undersigned Special Master.

That a transcript of said proceedings had and the testimony taken thereat is hereto attached and made a part hereof.

That at the hearing held on Mach 16, 1939, the following list of claims was presented, examined, allowed and classi-

fied as general obligations of the City of Avon Park, payable without preference out of funds derived from the same source, viz.:

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
1.	Mrs. Rose K. Raithel, 60 Kingsbury Place, St. Louis, Mo.	$2,000	$ 900.00
2.	Board of County Commissioners, Highlands County, Sebring, Fla.	4,000	.....
3.	Smith Brothers, Clay Center, Kansas	5,000	2,100.00
4.	Florida Municipal Bondholders' Protective Committee, Room 406 Hildebrandt Bldg., Jacksonville, Fla.	51,500	20,270.83
5.	Thomas M. Cook & Company, West Palm Beach, Fla.	23,000	715.00
6.	J. O. Adams, 400 Roosevelt Bldg., Los Angeles, Calif.	3,000	1,305.00
7.	Charles H. Albers, Receiver Northwestern Trust & Savings Bank, 7 So. Dearborn St., Chicago, Ill.	5,000	.....
8.	Harry F. Berls, 1727¾ N. Sycamore Ave., Los Angeles, Calif...	20,000	.....
9.	P. M. Boyd, 215 E. Duval St., Jacksonville, Fla.	4,000	.....
10.	Brown-Crummer Investment Co., Room 800 First Natl. Bank Bldg., Chicago, Ill.	3,000	1,.305.00
11.	R. B. Bryan, Route #2, Madison Fla.	3,000	.....
12.	Johanna Calmer by Warren J. Bleyaert, Agent, 220 W. Sixth St., Monroe, Mich.	2,000	910.00
13.	Fred P. Carr, 1000 Insurance Exchange Bldg., Des Moines	3,000	45.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
14.	Bank of Cattaraugus, Cattaraugus, N. Y.	1,000	.....
15.	R. E. Crummer & Company, Chicago, Ill.	....	25,243.33
16.	W. P. Davis, 314 Equitable Bldg., Des Moines, Iowa	10,000	2,495.00
17.	Erwin R. Effler & LeRoy E. Eastman, Trustees U/W of Mary Sedate McCann, deceased, Toledo, Ohio	2,000	.....
18.	First National Bank of Monroe, Monroe, Mich.	3,000	1,365.00
19.	Oliver C. Foreman, 58 E. Washington St., 2018 Chicago, Ill.	5,000	.....
20.	Mrs. Dorothy B. Gossard, 6707 Colorado St., Overland Park, Kansas	10,000	4,350.00
21.	Julia D. Green, 171 W. 57th St., Shelton Island Heights, N. Y.	1,000	.....
22.	Edwin M. Hadley, Jr., 629 Kimball Rd. Highland Park, Ill.	5,000	.....
23.	A. S. Huyck & Company, 100 West Monroe St., Chicago, Ill.	10,000	.....
24.	Walter J. Krager, Cattaraugus, N. Y.	1,000	.....
25.	O. J. Kruger, 111 W. Fifth St., St. Paul, Minn.	5,000	75.00
26.	Henry F. Lankow, Little Valley, N. Y.	2,000	620.00
27.	Clifford Lathrop, First Natl. Bank Bldg., Wichita, Kansas	16,000	1,920.00
28.	Frank Lathrop, First Natl. Bank Bldg., Wichita, Kansas	10,000	1,350.00
29.	Life & Casualty Insurance Company of Tennessee, 159–4th Ave. N., Nashville, Tenn.	5,000	800.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
30.	Rene D. Mallett, Hendersonville, N. C.	1,000	100.00
31.	Prairie State Bank, Augusta, Kansas	18,000	1,170.00
32.	J. D. Puller, Thomas D. Green and W. J. Zalesky, Trustees of J. T. Dismukes, deceased. (Mr. Puller, St. Augustine, Fla.)	25,000	.....
33.	J. D. Puller, St. Augustine, Fla.	2,000	.....
34.	Howard Scott, Neodesha, Kan.	1,000	420.00
35.	W. H. Stone, Bristol, Tenn.	5,000	.....
36.	Security Benefit Association, Topeka, Kansas	38,000	5,130.00
37.	Susan Sheaff, Holcomb, Ill.	4,000	160.00
38.	C. L. Swan, Erie, Kansas	5,000	1,200.00
39.	Emma Thornton, Coldwater, Kansas	5,000	375.00
40.	Nellie R. Yeasting, 2817 Powhattan Parkway, Toledo, Ohio	5,000	.....
41.	Elizabeth D. Zalesky, c/o National Savings & Trust Co., Washington, D. C.	1,000	.....
42.	Lawrence Leirman, Winfield, Kansas	7,000	315.00
43.	Carl A. Morawitz, Wichita, Kansas	2,000	780.00
44.	Curtis C. Coxe, as Agent for Trustees of assets of former People's Bank for Savings, St. Augustine, Fla.	8,000	3,680.00
45.	R. E. Crummer & Co., Chicago, Ill.	10,000	450.00
46.	The Brown-Crummer Investment Co., Wichita, Kansas (Claim #46 covered by judgments.)	24,000	58,535.00
47.	R. E. Crummer & Company, Chicago, Ill.	.....	3,460.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
	(Claim #47 covered by judgment.)		
48.	The Security Benefit Assn., Topeka, Kansas	.....	11,400.00
	(Claim #48 covered by judgment.)		
49.	Aid Association for Lutherans, Appleton, Wis.	5,000	2,300.00
50.	Margaretha Vogt, Box 753, Avon Park, Fla.	1,000	.....
51.	F. R. Messenger, 300 N. Terrace Drive, Wichita, Kan.	9,000	4,140.00
52.	R. E. Crummer & Company, Chicago, Ill.	95,000	14,168.33
53.	R. E. Crummer & Company, Chicago, Ill.	1,000	1,540.00
54.	Brown-Crummer Investment Co., Wichita, Kansas	146,000	35,774.17
55.	F. C. Swinburne, Box 22, Clearwater, Fla.	5,000	3,095.00
56.	Roger W. Babson, by Touchton & Crittenden, Attys., Winter Haven, Fla.	.....	.....
	(Claim #56 covered by judgment)		
57.	William E. Sweet, Denver, Colo...	11,000	1,155.00
	(Claim #57 covered by judgment)		
58.	The American United Life Insurance Co., Indianapolis, Ind.	35,000	4,550.00
59.	American United Life Ins. Co., Indianapolis, Ind.	.....	11,550.00
	(Claim #59 covered by judgment)		
60.	Lawrence W. Rittenoure, by Harry L. Thompson, Attorney, Clearwater, Fla.		
	(Claim #60 covered by judgment)		

Claims Nos. 56, 57, 59 and 60, represented by judgments and not accepting the plan as outlined by the Petitioner, are to be allowed only in the amount of the claim representing the total amount of bonds and interest coupons up to July 1, 1937.

The Petitioner, City of Avon Park, acknowledges the validity of all claims, except as to the amounts represented by the judgments in Claims Nos. 56, 57, 59 and 60.

The claim of Rose K. Raithel, No. 1, is a duplicate claim, which amount is included in Claim No. 4; therefore, the claim No. 4 has been reduced $2,000 principal and $800.00 interest as included in said claim.

The total amount of claims as allowed, which have filed acceptances of the plan of composition herein shows a principal amount of $627,500.00 and interest accrued to July 1, 1937 of $207,766.66, or a total principal and interest of $835,266.66.

FINDINGS OF FACT.

Pursuant to the Order of the Court, and after hearing and carefully considering all the evidence offered, The Special Master does now hereby make the following findings of fact:

(1) That the petitioner, City of Avon Park, Florida, is a municipality under and by virtue of the laws of the State of Florida, situated in Highlands County, Florida, within the territorial jurisdiction of this Court, and that it was a duly constituted municipality at all times during which the bond issues affected by the plan of composition

involved in this proceeding were made and issued,
219 and that it is such a municipality as comes within the terms and provisions of Chapter IX of the Bankruptcy Act of the United States, as amended.

(2) That the petitioner, City of Avon Park, Florida, is a municipality or taxing district within the meaning of the said terms, as used in Chapter 15878, Laws of Florida, Acts of 1933, conferring upon municipalities, taxing districts and political subdivisions of the State of Florida power and authority to institute proceedings and accept the benefits of any amendments to the bankruptcy laws of the United States enacted for the relief of municipalities, taxing districts and political subdivisions.

(3) That the municipal debtor, City of Avon Park, Florida mailed and published all notices as required by the Order of the Court entered on the 15th day of August, 1938, and filed proper certificates thereof.

(4) That said City now has and has had for several years last past a population of approximately 3500, of which approximately 600 are colored people; that the City has a limited amount of industry or business and that since the year, 1925, there has been a decline in business; that all the banks within said City failed prior to 1930 and business conditions have been seriously affected in the City thereby; that the assessed valuation of property within the said City as presently constituted, subject to taxation, amounts to $2,504,087, being the assessed valuation for the year, 1937, no later valuation being given in the testimony; that the assessed valuation of property within the City of Avon Park for the year, 1926, was $6,536,256.00 and valuations had declined from that time to the year, 1937, to the sum of $2,504.087.00; and over a long period of years the City has been able to collect only approximately 40% of the total taxes levied by the City.

220 (5) That the aggregate amount of bonded indebtedness and interest thereon to July 1, 1937 to be affected by the plan is as shown in Section 1 of the Plan of Composition of the City of Avon Park, Florida, as Modified, and aggregates the sum of $865,500.00 principal, and $358,251.76 interest accrued thereon to July 1, 1937, whether represented by coupons or not.

(6) That since the year, 1933, the City of Avon Park has made a sincere effort to collect taxes and in pursuance of such effort has foreclosed on properties of the tax payers of the City aggregating approximately 10% of the total property within the City. A number of suits have been filed against the City by bondholders and judgments recovered. Other suits are threatened and Petitioner is being harrassed by creditors.

(7) That the City submitted or caused to be submitted to its creditors for acceptance the plan of composition of its debts, to-wit: the plan submitted in these proceedings and which plan is made a part of the Petition filed herein. That prior to the time of the commencement of this proceeding, creditors of said City affected by the said plan composition holding securities of said Petitioner in an amount more than fifty-one percentum (51%) of the amount of its indebtedness, accepted said plan of composition in writing, exclusive of any securities owned, held or controlled by the Petitioner, and that said Petitioner did not and does not own, hold or control any of said securities.

That on the 12th day of July, A. D. 1937, the City Council of the City of Avon Park, Florida, by resolution duly and legally passed, authorized the bringing of these proceedings and in accordance with said plan of composition and also pursuant to authority under and by virtue of Chapter 15878 of the Laws of Florida, 1933, that

on the 23rd day of February, A. D. 1939, the City
221 Council adopted a further resolution, providing for an amendment or change in the plan after such amendment or change in the plan had been approved by order of the United States District Judge.

(8) That said City is insolvent and unable to meet its debts as they mature.

(9) That said bonded indebtedness of said City hereinbefore described is the only portion of its indebtedness to be affected by the plan of composition offered herein.

(10) That each and all of the bonds issued by said City of Avon Park hereinbefore described and affected by the plan of composition are general obligations of said City, and are payble without preference out of funds derived from the same sources, to-wit, ad valorem taxes, and no specific property or revenue is pledged to the payment of said bonds, or any of them.

(11) That any judgments heretofore rendered on said bonds, or interest coupons annexed thereto, or interest on said bonds or interest coupons, are payable without preference out of the said sole source of revenue, to-wit, ad valorem taxes levied by said petitioner, and no specific property or revenue is pledged for the payment of any of said judgments, and therefore the whole of said indebtedness, including said judgments, whether there are writs of mandamus by way of execution thereon or not, constitute part of the same single class of creditors; and that said single class of creditors is the only class of creditors of the petitioner affected by the plan of composition.

(12 That in accordance with the said plan as modified, no amount of money is to be paid by the Petitioner for services or expenses incident to the composition, but the

same are to be paid by the City's Fiscal Agent, R. E. Crummer & Company, out of assessments against bondholders as provided in said plan, as modified, which arrangement is fair and reasonable, and is manifestly to the best interest of the debtor City since it is without
222 the means to meet such expenses; and it is likewise fair and equitable to the participating bondholders because a settlement of the City's financial difficulties will tend to re-establish the value of its outstanding bonds.

(13) That under a peremptory writ of mandamus issued by reason of a judgment obtained against the City of Avon Park by Meredith, Rogers & Martin, a levy was made and taxes collected as a result thereof, which tax money so collected is still held by the City of Avon Park and is to be used in meeting the first year's appropriation for a sinking fund under the refunding plan herein. Any legal right to such fund has been waived by Meredith, Rogers & Martin.

14) That in a judgment obtained against the City of Avon Park by one Lawrence W. Rittenoure, a part of said judgment was represented by notes against the said City in the principal amount of $25,000.00, which notes, or the portion of the judgment represented by said notes, are not included in the refunding plan herein.

(15) That the City of Avon Park, Florida, municipal debtor, is to issue its refunding bonds on the basis of 100% of the par value of the said principal indebtedness outstanding, to-wit, $865,500.00, or refunding bonds are to be issued in the total amount of $865,500.00; said refunding bonds are to be dated as of July 1, 1937 and to mature July 1, 1967 and will bear interest as follows:

2% per annum for a period of two years from the date thereof;

3% per annum for the next succeeding six years;

4% per annum for the next succeeding seven years;

and 5% per annum thereafter.

All unpaid interest indebtedness of the City of Avon Park accrued to July 1, 1937 as provided in the plan shall have deposited evidence of such interest in escrow with the First National Bank of Chicago, Chicago, Illinois, or such other escrow agent as may be approved by
223 the United States District Judge having jurisdiction of the cause, against which escrow the said escrow agent shall issue certificates of deposit in the name of the owners of the equity thereof, said certificates to identify the amount of interest accruals evidenced thereby. Certificates of deposit as aforesaid are to be issued for the full amount of interest accrued up to July 1, 1937 in the aggregate sum of 358,251.76. The plan provides for the adjustment of taxes and special assessment liens of the City and for the retirement of the cetificates of deposit representing accumulated interest as aforesaid under varying percentages, as outlined in the plan.

Said bonds are to provide for the levy and collection of a direct annual tax set out in detail in the said plan and the said bonds having the redemption and callable privileges specifically set out in the plan. Said City will be able to collect such ad valorem taxes to meet all requirements for the payment of said interest on said refunding bonds and certificates as aforesaid and to provide funds for a sinking fund for the retirement thereof, as set out in said plan.

(16) That the said plan of composition treats all of the creditors affected thereby fairly and equitably and there are no other arrangements or agreements giving any of said creditors any right or benefit other than as specified in said plan, and said plan does not disciminate unfairly in favor of any creditor, or class of creditors, and under said plan of composition said creditors will obtain securities and bonds upon which they can collect interest, and said plan is for the best interest of the creditors. It is the opinion of the Special Master from the testimony taken in this cause that the said City after paying its necessary operating expenses, cannot at the present time make any greater or further payment to its bondholders affected by said plan of composition than as specified in said plan.

224 (17) That sixty (60) creditors affected by the said plan of composition have filed their claims herein and that each of said claims has been approved by your Master, as shown by the report of said testimony which by reference is made a part hereof, all of which claims are in proper form in accordance with the order of the Court made herein. That each of said creditors either submitted with said claims the bonds and interest coupons or otherwise satisfactorily complied with the Court's Order concerning the same. That the holders of securities representing more than 66-2/3% of the aggregate amount of claims of all classes affected by the plan have filed consents to the said plan in writing, and proofs of claim thereon, and petitioner has admitted its liability on said claims in said amounts. Approximately 31% of creditors affected by the plan have not filed their written consents thereto and approximately 10% of the total amount of indebtedness of the said City have filed objections to the plan.

(18) That said plan of composition was offered by the said City in good faith and that its acceptance by creditors accepting same is in good faith.

(19) That under the laws of the State of Florida, the City is authorized and empowered to take all action necessary by it to carry out said plan of composition.

CONCLUSIONS OF LAW.

That the Special Master, pursuant to the Order of Court, does now hereby make the following conclusions of law:

(1) That the Court has jurisdiction of these proceedings; that the petitioner is a municipality and City within the meaning of Chapter IX of the Bankruptcy Act of the United States, as amended, and is authorized by the laws of the State of Florida, to-wit, Chapter 15878, Laws of Florida, Acts of 1933, to institute these proceedings; that petitioning City was a municipality at all times
225 when it issued the bonds involved in this plan of composition, and it has the power and authority under and by virtue of the laws of the State of Florida to take all action necessary to be taken by it to carry out the said plan.

(2) That the plan of composition, as modified, and the proceedings had and taken herein comply in all respects with the provisions and requirements of Chapter IX of the Bankruptcy Act of the United States, as amended.

(3) That all of the material allegations of the petition of said City are sustained, and that said City is entitled to the relief prayed for in said petition.

(4) That said plan of composition, as modified, is fair and equitable and for the best interests of the creditors, and does not discriminate unfairly in favor of any creditor, or class of creditors, and complies with the provisions of Chapter IX of the Bankruptcy Act of the United

States, as amended, and has been accepted and approved in writing by and on behalf of the creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by said plan of composition, exclusive of any claims owned, held or controlled by said petitioner; and that all amounts to be paid by petitioner for services or expenses incident to said plan of composition have been fully disclosed, inasmuch as said Petitioner is paying none of said amounts.

(5) That the offer of said plan of composition, as modified, by the said City, and its acceptance by said creditors, are in good faith.

(6) That all objections, motions and pleas filed on behalf of certain dissenting creditors to the plan of composition, as modified, are not well founded, and should be overruled, except that the Motion of Lawrence W. Rittenoure filed with the Special Master on the 22nd day of March, A. D. 1939 should be granted and an Order should be entered amending the injunction heretofore issued insofar as the said injunction stays the en-
226 forcement of the collection of the amount of the notes together with accumulated interest thereon, included in the judgment heretofore obtained against the City of Avon Park by the said Lawrence W. Rittenoure.

(7) That no creditor who has asserted herein a vested right by virtue of such creditor having heretofore procured a final judgment, or alternative writ of mandamus, or peremptory writ of mandamus, has any such vested rights which precludes the operation of the bankruptcy power of Congress thereon, and therefore, such claimants are not to be placed in any other or different class than creditors generally who do not have judgments, alternative writs of mandamus, or peremptory writs of mandamus; and all creditors, whether merely the holders of bonds or coupons,

or whether they have obtained judgments, alternative writs of mandamus, or peremptory writs of mandamus, are of one single class, payable from one and the same source, to-wit, ad valorem taxes levied by the petitioning City of Avon Park, without priority or preference.

SPECIAL MASTER'S NECESSARY EXPENSES AND REASONABLE COMPENSATION.

Your Special Master would further report that the necessary expenses incurred by him in connection with these proceedings, were as follows: Clerical assistance and filing and tabulating claims, $15.00; Clerical assistance in preparing and mailing 123 notices of hearing, together with stationery, etc, $15.70; Postage incident thereto, $3.75; Services of Reporter for two days in taking testimony, $20.00; Travel expense to Orlando, March 22, 1939, $8.00; and Transcribing testimony and copy provided petitioner, $111.30; making a total of $173.75; the sum of $150.00 has been paid by R. E. Crummer & Company to apply on said costs, leaving a balance due of $23.75.

227 Your Special Master further respectfully requests this Honorable Court to fix the amount of his reasonable compensation for services rendered in this case as Special Master.

Recommendations.

It is therefore recommended by your undersigned Special Master that an Interlocutory Decree should be entered herein, confirming and approving the plan of composition of said City of Avon Park, as modified, and authorizing and empowering said City to immediately issue said refunding bonds and certificates of deposit and carry out said plan of composition as provided for in said plan.

Dated this 31st day of March, A. D. 1939.

Respectfully submitted,

ALLEN E. WALKER,

Special Master.

228 Objections to Master's Report was filed April 6, 1939, by Roger W. Babson, copy of said objections being as follows:

OBJECTIONS TO MASTER'S REPORT.

229 (Title Omitted.)

Now comes Roger W. Babson, an objecting creditor in the foregoing cause, by his undersigned attorneys, and files these his objections or exceptions to the Special Master's report in the foregoing cause, to-wit:

I.

This creditor objects or excepts to the allowance of the claims of R. E. Crummer & Company listed as being owned by said Company, upon the following grounds, to-wit:

(a) R. E. Crummer & Company is the fiscal agent of said City and acquired its claims on or about or succeeding the date it was appointed fiscal agent and having thus acquired said claims, the same in law are held or controlled by the petitioner, and should be excluded in computing the percentage of consenting creditors under the terms of the municipal Bankruptcy Act, as amended.

(b) That excluding the listed claims of said fiscal agent, the consenting creditors' claims will amount to approximately 58% of the indebtedness of said City, and

not sufficient under the Statute to confirm the plan of composition.

II.

This creditors objects or excepts to paragraphs 12, 16 and 18 of the Master's findings of fact and paragraphs 2, 4 and 5 of the Master's conclusions of law set forth in said report, upon the following grounds, to-wit:

(a) Said plan of composition discriminates unfairly in favor of one creditor, to-wit: R. E. Crummer & Company, the fiscal agent, in this, other bondholders are penalized $20.00 per original bond for refusing to allow the fiscal agent to speculate on an asset belonging to other
230 bondholders, viz: defaulted interest coupons and interest; and allows the fiscal agent to charge other bondholders $20.00 per bond where defaulted interest is sold to the fiscal agent, as refunding expense, and will allow the fiscal agent to make a 50% cash profit on sale of certificates of deposit or interest refunding bonds to the City, less refunding expense, or approximately $50,000.00 plus $20.000 per original bond during the first six months after confirmation of the plan, by purchasing defaulted interest of approximately $300,000.00 at 33-1/3 cents on the dollar and disposing of same to the City at .50¢ on the dollar during such period; or in the event said City does not purchase such certificates of deposit or interest refunding bonds during the first two years after confirmation of the plan, then said fiscal agent will have a potential profit of approximately 300% or over $200,000.00 plus $20.00 per original bond, less refunding expense.

III.

This creditor objects or excepts to paragraph 11 of the Master's findings of fact and paragraphs 3, 6 and 7 of

the Master's conclusions of law as set forth in said report, upon the following grounds, to-wit:

(a) The proof shows this creditor has heretofore obtained a judgment on bonds in this Court, and two peremptory writs of mandamus have been obtained thereon ordering the City officials to levy and collect taxes to pay such judgment, and levies made pursuant to said writs prior to the filing of the petition in bankruptcy by the City are in part uncollected, and no provision is made in the plan of composition for applying the proceeds of such special levies to the payment of this creditor's judgment; and no provision is made in the plan of composition for refunding said judgment, as such, and said judgment is ignored as a "security" under said plan together with accrued interest on same at 8% per annum.

(b) Said report fails to recognize and allow this creditor's claim as a preferred claim in bankruptcy, and fails to recognize this creditor as constituting a sole
231 and separate class of creditor, who has a lien on an objective or resultant fund to be derived from collections under a special levy made under peremptory writs of mandamus; and fails to recognize this creditor, as a sole class of creditor, whose claim is payable with preference from revenues of the City, specifically and solely pledged to payment of this creditor's judgment under peremptory writs of mandamus.

(c) And fails to recognize that this creditor has a vested right in the amount of said judgment and a vested right in writs of mandamus and resultant revenues to be derived from collection of levies heretofore made pursuant to said peremptory writs of mandamus, for which no provision has been made under the plan of composition.

TOUCHTON & CRITTENDEN.
By H. C. CRITTENDEN,
Attorneys for Roger W. Babson.

State of Florida,
County of Polk.

Personally appeared before me the undersigned authority, H. C. Crittenden, who being by me first duly sworn, upon oath says: that he is of counsel for Roger W. Babson, one of the objecting creditors in the foregoing cause; that he served a true copy of the foregoing objections to the Master's report upon Henry L. Jollay, one of the attorneys of record for the petitioner in the foregoing cause, by placing said copy in an envelope addressed to Henry L. Jollay, attorney-law, Winter Haven, Florida, by securely ensealing said envelope and placing same in the mails at Winter Haven, Florida, on the 5th day of April, 1939, with sufficient postage thereon to insure delivery.

H. C. CRITTENDEN.

Sworn to and subscribed before me this 5th day of April, A. D. 1939.

LOIS HUGHES,
(Seal) Notary Public, State of Florida at Large.

My commission expires May 20, 1939.

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232 On April 10, 1939, Exceptions to the Report of the Special Master was filed, by American United Life Insurance Company and William E. Sweet; copy of said exceptions being as follows:

EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

233 (Title Omitted.)

Comes now American United Life Insurance Company, a corporation, and William E. Sweet, creditors of the City

of Avon Park, and file the following exceptions to the report of the Special Master herein filed:

1. The Master erred in holding that more than 66-2/3 per cent of the holders of bonds of the City have consented to the granting of the petition, because testimony affirmatively shows that a large portion of the bonds that purported to consent were owned by the fiscal agent of the City, which purchased them after it had become fiscal agent.

2. The Master erred in permitting the fiscal agent and its affiliated corporation, the Brown-Crummer Investment Company, to file a proof of claim upon bonds and coupons which, by the record, are shown to have been mutilated and destroyed when judgment was obtained upon them in the State or Federal Court.

3. The Master erred in holding that the testimony of the City and its fiscal agent affirmatively shows that the plan is fair and equitable, because it is admitted that the City cannot pay the total indebtedness repre-
234 sented by the face value of the refunding bonds, except by the manipulation of the market price of the same by the City and its fiscal agent.

4. The Master erred in holding that the plan of refunding proposed is a composition which can be confirmed by this Court, as the plan proposed discriminates against the holders of judgments against the City.

5. The Master erred in holding that the plan is fair and equitable to the undersigned creditors, as it is admitted that they are required to surrender judgments which they have obtained at great expense, and must either sell their coupons to the fiscal agent at a price below that

which the City agrees to pay, and in addition, must pay a charge of $20. a bond, or in lieu thereof, pay a charge of $40. a bond in order to retain their coupons.

6. The Master erred in holding that the plan is fair and equitable, for it does not provide the amount of compensation to be awarded to the fiscal agent for its services and expenses, nor has that amount been fixed by the Court, as provided by law.

7. In recommending that the plan of composition be approved, the Master erred, because the plan provides that refunding bonds representing interest coupons will not be issued for a period of two years, and, under the statute, consideration for the composition must be delivered to the Court and distributed among the creditors.

8. The Master erred in holding that the plan was fair and equitable and offered in good faith, because
235 the evidence conclusively shows that the plan discriminates in favor of the fiscal agent.

9. The Master erred in holding that the plan was fair and equitable and offered in good faith, because the testimony conclusively shows that the fiscal agent will be the principal beneficiary of the plan, from the profits that will insure to it upon the obligations of the City which it purchased at a great discount after it had entered into a contract of agency with the City.

10. The Master erred in holding the plan fair and equitable, because the refunding plan does not authorize the fiscal agent to purchase obligations of the City for its own profit after it became agent, and neither the plan nor the petition disclosed that the fiscal agent was the principal creditor, the amount of bonds which had been purchased, nor the price or prices at which it ac-

quired its bonds, nor when it acquired them, nor that the coupons owned were acquired by it without cost.

11. The Master erred in holding that the City was acting in good faith, because it appears from the uncontradicted evidence that the fiscal agent purchased judgments against the City to prevent the holders from objecting to the plan, and the City made a special tax levy for the benefit of the fiscal agent, and, at the same time, deliberately ignored the peremptory writs which had been issued by this Court in favor of these creditors.

12. The Master erred in holding that under the plan the proceeds of the special tax levy made by the City,
as a result of collusion with the fiscal agent, will
236 be used for the benefit of all creditors, in that
neither the petition nor the plan provides for the same.

13. The Master erred in not holding that the plan of composition violates the Act of Bankruptcy, because the testimony shows that the City has in its possession a fund of money, the amount of which is undisclosed, (and the existence of which was undisclosed prior to the taking of testimony) which has resulted from a special levy made by the City for the fiscal agent in response to a writ issued with the consent of the City at a time when the City was deliberately refusing to comply with the writs of mandamus which had been procured by these and other creditors.

14. The Master erred in holding that these defendants should be compelled to accept a plan of composition which seeks to deprive them of the rights that had become vested before the filing of the petition under judgments and peremptory writs of mandamus which they had obtained to enforce such judgments.

15. The Master erred in holding that the claims of creditors based upon judgments supported by writs of mandamus, are in the same class with claims of creditors which have not been reduced to judgments.

16. The Master erred in holding that the plan of composition was fair and equitable and offered in good faith, because the testimony conclusively proves that the plan was prepared by the fiscal agent, that the City officials had no understanding of its terms, and that the fiscal agent was carrying out the plan while it was acting as agent for bondholders, as agent for the City, and as principal creditor of the City.

237 17. The Master erred in recommending that the Court confirm the plan of composition, because the evidence conclusively proves all of the allegations of the answer of these defendants, and the amendment thereto.

18. The Master erred in finding that the composition was for either the best interests of the City or of the creditors, because the undisputed testimony shows that the City will be unable to pay the refunding bonds at their face value, and that the increased amount of bonds to be issued by the City, due to refunding at par of the bonds and coupons purchased by the fiscal agent at greatly reduced prices, will offset the saving of interest which would otherwise accrue to the City by the reduced rate provided on the refunding bonds.

19. The Master erred in holding that the City has power to carry out the plan of composition, because it has no power to bind itself to carry out the plan for the settlement of coupons.

20. The Master erred in holding that the plan of composition complies with the statute, because it creates two classes of creditors, one which elects not to sell their interest claims, and the other which does, and discriminates between the classes by charging twice as much compensation to the former class.

21. The Master erred in holding that the plan was prepared in good faith and was fair and equitable, because the testimony indicates that it was the result of collusion between the City and the fiscal agent, to enable the
fiscal agent to profit by the manipulation of
238 the market value of the securities of the town.

22. The Master erred in holding that the plan conforms to the requirements of the statute, because it appears that some of the bonds now outstanding were secured by the pledge of special assessment liens, and each of these issues constitute a class, and it does not appear that the City has the consent of two-thirds of each of said issues.

GILES J. PATTERSON,
Attorney for American United
Life Insurance Company,
and William E. Sweet.

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239 On June 19, 1939, Notice of Hearing on Motion for Decree confirming the Plan of Compensation was filed; copy thereof is omitted.

On June 19, 1939, Motion for Decree confirming Plan of Composition was filed; copy thereof is omitted.

On June 19, 1939, Interlocutory Decree was filed; copy of said decree being as follows:

240 INTERLOCUTORY DECREE.

In the District Court of the United States, In and for the Southern District of Florida, Tampa Division.

No. 3088-T-Bankruptcy.

In the Matter of: City of Avon Park, Florida, Debtor.

In Proceedings for Composition of Debts Under Sections 81, 82, 83 and 84, of Chapter IX, of the Acts of Congress Relating to Bankruptcy.

This cause coming on for further hearing upon the verified Petition for Composition of Debts filed herein by the City of Avon Park, Florida, and upon the modifications thereto heretofore allowed to be filed herein pursuant to prior order of this Court under date of February 28, 1939, and upon the objections of certain creditors to the said plan of composition and to the plan of composition as modified, and upon the motion of petitioner for the entry of an interlocutory decree confirming said plan as modified, and upon the report of the Special Master herein, and the Court having considered this cause, the pleadings therein, the objections of said creditors, and the report of the said Special Master, and having heard counsel for petitioner and for said objecting creditors, and being fully advised in the premises,

It is thereupon Ordered, Adjudged and Decreed as follows:

I.

That the Court does hereby make the following findings of fact:

(1) That the petitioner, City of Avon Park, Florida, is a municipality under and by virtue of the laws of the State of Florida, situated in Highlands County, Florida, within the territorial jurisdiction of this Court, and that it was a duly constituted municipality at all times during which the bond issues affected by the plan of
241 composition involved in this proceeding were made and issued, and that it is such a municipality as comes within the terms and provisions of Chapter IX of the Bankruptcy Act of the United States, as amended.

(2) That the petitioner, City of Avon Park, Florida, is a municipality or taxing district within the meaning of the said terms, as used in Chapter 15,878, Laws of Florida, Acts of 1938, conferring upon municipalities, taxing districts and political subdivisions of the State of Florida power and authority to institute proceedings and accept the benefits of any amendments to the bankruptcy laws of the United States enacted for the relief of municipalities, taxing districts and political subdivisions.

(3) That the municipal debtor, City of Avon Park, Florida, mailed and published all notices as required by the Order of the Court entered on the 15th day of August, 1938, and filed proper certificates thereof.

(4) That said City now has and has had for several years last past a population of approximately 3500, of which approximately 600 are colored people; that the City has a limited amount of industry or business, and that since the year 1925 there has been a decline in

business; that all the banks within said City failed prior to 1930 and business conditions have been seriously affected in the City thereby; that the assessed valuation of property within the said City as presently constituted, subject to taxation, amounts to $2,504,087.00, being the assessed valuation for the year 1937, no later valuation being given in the testimony; that the assessed valuation of property within the City of Avon Park for the year 1926 was $6,536,256. and valuations had declined from that time to the year 1937, to the sum of $2,504,087.00; and over a long period of years the City has been able to collect only approximately 40% of the total taxes levied by the City.

5. That the aggregate amount of bonded indebtedness and interest thereon to July 1, 1937 to be affected by the plan is as shown in Section 1 of the Plan of Composition of the City of Avon Park, Florida, as modified, and aggregates the sum of $865,500.00 prin-
242 cipal, and $358,251.76 interest accrued thereon to July 1, 1937, whether represented by coupons or not.

(6) That since the year 1933 the City of Avon Park has made a sincere effort to collect taxes and in pursuant of such effort has foreclosed on properties of the taxpayers of the City aggregating approximately 10% of the total property within the City. A number of suits have been filed against the City by bondholders and judgments recovered. Other suits are threatened and petitioner is being harassed by creditors.

(7) That the City submitted or caused to be submitted to its creditors for acceptance the plan of composition of its debts, to-wit, the plan submitted in these proceedings and which plan is made a part of the petition filed herein. That prior to the time of the commence-

ment of this proceeding, creditors of said City affected by the said plan of composition holding securities of said petitioner in an amount more than fifty-one per centum (51%) of the amount of its indebtedness, accepted said plan of composition in writing, exclusive of any securities owned, held or controlled by the petitioner, and that said petitioner did not and does not own, hold or control any of said securities.

That on the 12th day of July, A. D. 1937, the City Council of the City of Avon Park, Florida, by resolution duly and legally passed, authorized the bringing of these proceedings, in accordance with said plan of composition and also pursuant to authority under and by virtue of Chapter 15,878 of the Laws of Florida of 1933; that on the 23rd day of January, A. D. 1939, the City Council adopted a further resolution, providing for an amendment or change in the plan after such amendment or change in the plan had been approved by order of the United States District Judge.

(8) That said City is insolvent and unable to meet its debts as they mature.

(9) That said bonded indebtedness of said City hereinbefore described is the only portion of its indebtedness to be affected by the plan of composition offered herein.

(10) That each and all of the bonds issued by said City of Avon Park hereinbefore described and
243 affected by the plan of composition are general obligations of said City, and are payable without preference out of funds derived from the same source, to-wit, ad valorem taxes, and no specific property or revenue is pledged to the payment of said bonds, or any of them.

(11) That any judgments heretofore rendered on said bonds, or interest coupons annexed thereto, or interest on said bonds or interest coupons, are payable without preference out of the said sole source of revenue, to-wit, ad valorem taxes levied by said petitioner, and no specific property or revenue is pledged for the payment of any of said judgments, and therefore the whole of said indebtedness, including said judgments, whether there are writs of mandamus by way of execution thereon or not, constitute part of the same single class of creditors, and that said single class of creditors is the only class of creditors of the petitioner affected by the plan of composition.

(12) That in accordance with the said plan as modified, no amount of money is to be paid by the petitioner for services or expenses incident to the composition, but the same are to be paid by the City's Fiscal Agent, R. E. Crummer & Company, out of assessments against bondholders as provided in said plan, as modified, which arrangement is fair and reasonable, and is manifestly to the best interest of the debtor City since it is without the means to meet such expenses; and it is likewise fair and equitable to the participating bondholders because a settlement of the City's financial difficulties will tend to re-establish the value of its outstanding bonds.

(13) That under a peremptory writ of mandamus issued by reason of a judgment obtained against the City of Avon Park by Meredith, Rogers & Martin a levy was made and taxes collected as a result thereof, which tax money so collected is still held by the City of Avon Park and is to be used in meeting the first year's appropriation for a sinking fund under the refunding plan herein. Any legal right to such fund has been waived by Meredith, Rogers & Martin.

(14) That in a judgment obtained against the City of Avon Park by one Lawrence W. Rittenoure, a
244 part of said judgment was represented by notes against the said City in the principal amount of $25,000.00, which notes, or the portion of the judgment represented by said notes, are not included in the refunding plan herein.

(15) That the City of Avon Park, Florida, municipal debtor, is to issue its refunding bonds on the basis of 100% of the par value of the said principal indebtedness outstanding, to-wit, $865,500.00, or refunding bonds are to be issued in the total amount of $865,500.00; said refunding bonds are to be dated as of July 1, 1937, and to mature July 1, 1967, and will bear interest as follows:

2% per annum for a period of two years from the date thereof;

3% per annum for the next succeeding six years;

4% per annum for the next succeeding seven years; and

5% per annum thereafter.

All unpaid interest indebtedness of the City of Avon Park accrued to July 1, 1937, as provided in the plan, shall have deposited evidence of such interest in escrow with the First National Bank of Chicago, Chicago, Illinois, or such other escrow agent as may be approved by the United States District Judge having jurisdiction of the cause, against which escrow the said escrow agent shall issue certificates of deposit in the name of the owners of the equity thereof, said certificates to identify the amount of interest accruals evidenced thereby. Certificates of deposit as aforesaid are to be issued for the full

amount of interest accrued up to July 1, 1937, in the aggregate sum of $358,251.76. The plan provides for the adjustment of taxes and special assessment liens of the City and for the retirement of the certificates of deposit accumulated interest as aforesaid under varying percentages, as outlined in the plan.

Said bonds are to provide for the levy and collection of a direct annual tax debt set out in detail in the said plan, and the said bonds to have the redemption and callable privileges specifically set out in the plan. Said City will be able to collect such ad valorem taxes to meet all requirements for the payment of said interest
245 on said refunding bonds and certificates as aforesaid and to provide funds for a sinking fund for the retirement thereof, as set out in said plan.

(16) That the said plan of composition treats all of the creditors affected thereby fairly and equitably, and there are no other arrangements or agreements giving any of said creditors any right or benefit other than as specified in said plan, and said plan does not discriminate unfairly in favor of any creditor, or class of creditors, and under said plan of composition said creditors will obtain securities and bonds upon which they can collect interest, and said plan is for the best interest of the creditors. It is the opinion of the Special Master from the testimony taken in this cause that the said City, after paying its necessary operating expenses, cannot at the present time make any greater or further payment to its bondholders affected by said plan of composition than as specified in said plan.

(17) That sixty (60) creditors affected by said plan of composition have filed their claims herein, and that each of said claims has been approved by your Master, as shown by the report of said testimony by which reference is made a part hereof, all of which claims are in

proper form in accordance with the order of the Court made herein. That each of said creditors either submitted with said claims the bonds and interest coupons, or otherwise satisfactorily complied with the Court's order concerning the same. That the holders of securities representing more than 66-2/3% of the aggregate amount of claims of all classes affected by the plan have filed consents to the said plan in writing, and proofs of claim thereon, and petitioner has admitted its liability on said claims in said amounts. That approximately 31% of creditors affected by the plan have not filed their written consents thereto, and approximately 10% of the total amount of indebtedness of said City have filed objections to the plan.

(18) That said plan of composition was offered by said City in good faith, and that its acceptance by creditors accepting same is in good faith.

19. That under the laws of the State of Florida, the City is authorized and empowered to take all
246 action necessary by it to carry out said plan of composition.

II.

That the Court does now hereby make the following conclusions of law:

(1) That the Court has jurisdiction of these proceedings; that the petitioner is a municipality and city within the meaning of Chapter IX of the Bankruptcy Act of the United States, as amended, and is authorized by the laws of the State of Florida, to-wit, Chapter 15,878, Laws of Florida, Acts of 1933, to institute these proceedings; that the petitioning City was a municipality at all times when it issued the bonds involved in this plan of composi-

tion, and it has the power and authority under and by virtue of the laws of the State of Florida to take all action necessary to be taken by it to carry out the said plan.

(2) That the plan of composition, as modified, and the proceedings had and taken herein, comply in all respects with the provisions and requirements of Chapter IX of the Bankruptcy Act of the United States, as amended.

(3) That all of the material allegations of the petition of said City are sustained, and that said City is entitled to the relief prayed for in said petition.

(4) That said plan of composition, as modified, is fair and equitable and for the best interests of the creditors, and does not discriminate unfairly in favor of any creditor, or class of creditors, and complies with the provisions of Chapter IX of the Bankruptcy Act of the United States, as amended, and has been accepted and approved in writing by and on behalf of the creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by said plan of composition, exclusive of any claims owned, held or controlled by petitioner; and that all amounts to be paid by petitioner for services or expenses incident to said plan of composition have been fully disclosed, inasmuch as said petitioner is paying none of said amounts.

247 (5) That the offer of said plan of composition, as modified, by the said City, and its acceptance by said creditors, are in good faith.

(6) That all objections, motions and pleas filed on behalf of certain dissenting creditors to the plan of composition, as modified, are not well founded, and should be overruled, except that the motion of Lawrence W.

Rittenoure filed with the Special Master on the 22nd day of March, A. D. 1939, should be granted, and an order should be entered amending the injunction heretofore issued in so far as the said injunction says the enforcement of the collection of the amount of the notes, together with accumulated interest thereon, included in the judgment heretofore obtained against the City of Avon Park by the said Lawrence W. Rittenoure.

(7) That no creditor who has asserted herein a vested right by virtue of such creditor having heretofore procured a final judgment, or alternative writ of mandamus, or peremptory writ of mandamus, has any such vested rights as preclude the operation of the bankruptcy power of Congress thereon, and therefore, such claimants are not to be placed in any other or different class than creditors generally who do not have judgments, alternative writs of mandamus, or peremptory writs of mandamus; and all creditors, whether merely the holders of bonds or coupons, or whether they have obtained judgments, alternative writs of mandamus or peremptory writs of mandamus are of one single class, payable from one and the same source, to-wit, ad valorem taxes levied by the petitioning City of Avon Park, without priority or preference.

III.

The Court does now, therefore, hereby Order, Adjudge and Decree as follows:

(1) That the plan of composition, as modified, filed herein by petitioner, for composition of its debts under Chapter IX of the Bankruptcy Act of the United States, as amended, be and the same is hereby in all respects confirmed and approved.

(2) That said plan of composition, as modified, is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any creditor, or class of creditors.

(3) That said plan of composition, as modified, has been accepted and approved, as required by the
248 provisions of subdivision (d) of Section 83, of Chapter IX, of the Bankruptcy Act of the United States, as amended, by having been accepted in writing by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by said plan, as modified, and which have been admitted by petitioner.

(4) That the petitioner is not required to pay any amount of money for services or expenses incident to the composition.

(5) That the offer of said plan of composition, as modified, and its acceptance, are in good faith.

(6) That the petitioner is authorized by law to take all action necessary to be taken by it to carry out the said plan as so modified.

(7) That each and every, the objections to said plan of composition and to the plan of composition as so modified, be and the same are hereby overruled.

(8) That each and every, the claims of vested rights heretofore filed herein on behalf of certain dissenting creditors be and the same are hereby severally disapproved and disallowed; and no creditor herein has any vested right by virtue of having heretofore procured a final judgment or alternative writ of mandamus, or peremptory writ of mandamus, based upon any of the securi-

ties affected by the plan of composition, as so modified, and all creditors of said City holding securities affected by said plan, regardless of whether said securities are evidenced by judgments, or whether said creditors have procured alternative writs of mandamus, or peremptory writs of mandamus, to enforce said judgments or said securities, be and they are hereby decreed to belong to one and the same class, payable without preference out of funds derived from the single and sole source of ad valorem taxes levied by the petitioning City.

(9) That all persons, firms or corporations having or holding judgments, writs of mandamus, or decrees of any nature or kind against petitioner, and the respective attorneys, agents, servants, employees and/or successors in interest of such persons, firms or corporations, be and they are hereby severally and separately enjoined from continuing against petitioner, City of Avon Park,
249 Florida, any suit whatsoever heretofore instituted by them, or any of them, or from instituting any suit, action or proceeding against petitioner, City of Avon Park, in any manner involving any securities or judgments, or execution thereon, embraced within the said plan of composition as modified, or embraced within any of their respective claims of vested rights, or to enforce any lien, or to enforce the levy of taxes or assessments for the payment of obligations under any such securities or judgments, or execution thereon, or any suit or process to levy upon or enforce against any property acquired by petitioner through foreclosure of any tax or special assessment lien, and from instituting, taking or continuing any proceeding of any kind, including contempt proceedings under or to enforce any peremptory writ of mandamus or proceeding brought to obtain such writ; and petitioner and its officials are hereby relieved of the necessity or duty of complying with any such peremptory writ of mandamus; and said creditors hereinabove enum-

erated are hereby decreed to be in the same class with all other creditors holding any securities affected by said plan of composition as modified; and upon final decree herein, shall be bound thereby in the same manner as all other creditors affected by said plan of composition as modified; provided, however, that the plaintiff in, or the owner of, that certain final judgment obtained by Lawrence W. Rittenoure, as plaintiff in that certain cause lately pending in this Court against petitioner, City of Avon Park, which said judgment was rendered on or about June 1, 1936, and modified on or about January 6, 1938, may enforce said judgment to the extent only that the notes of the City of Avon Park dated December 1, 1927, are included in said judgment, and the interest thereon, and pursuant to the law under which said notes were issued; and the injunction heretofore granted petitioner against the enforcement of said judgment is hereby dissolved and set aside in so far as it prevents the enforcement of said notes dated December 1, 1927, and the interest thereon, included in said judgment, but no further, the said notes not being included in or affected by the plan of composition herein.

(10) That all moneys in the hands of petitioner realized under a certain peremptory writ of mandamus
250 issued against petitioner in that certain cause lately pending in the Tenth Judicial Circuit in and for Highlands County, Florida, wherein the State of Florida ex rel. W. J. Meredith, L. F. Rogers and James G. Martin, were relators, and the City of Avon Park, et al., were respondents, shall be made available and used in meeting the first year's appropriation for the interest and sinking fund for the bonds to be issued under the refunding plan herein, inasmuch as the said Meredith, Rogers and Martin have, by and through these proceedings, voluntarily waived any right to collect the said moneys so realized.

(11) That the First National Bank of Chicago, Chicago, Illinois, be and it is hereby named the Exchange Agent and Escrow Agent, to perform all duties appertaining to such agencies in connection with the said plan of composition as modified.

(12) That the petitioner, City of Avon Park, be and it is hereby authorized and directed forthwith to begin and carry through to a conclusion within six months from the date hereof, or within such further time as the Court may allow, all acts to be performed by it in connection with the consummation of said plan of composition as modified, and to take such further steps and do such further acts as shall be necessary and appropriate to carry out in good faith the said plan of composition as modified, embodied in these proceedings.

(13) That pending the delivery of the new securities under the plan of composition as modified, and under this order, and pending the entry of a final decree herein, all persons, firms and corporations be and they are hereby enjoined from collecting and enforcing, or attempting to collect or enforce, any claim or claims against said City of Avon Park on account of any of the securities affected by the plan of composition, including judgments thereon, and that they be and are hereby further enjoined from prosecuting any suit or suits at law or in equity, based upon such bonds or coupons, including judgments thereon, or interest thereon, and from commencing any suits by way of mandamus, or otherwise, against the City of Avon Park on account of any such securities or judgments thereon.

(14) That each and every, the known creditors of the City of Avon Park, as disclosed by the proceedings
251 thus far, have duly and properly been notified in compliance with prior order of this Court entered

herein on August 15, 1938, as shown by affidavit of the City Clerk of the City of Avon Park, and the form, manner and method of giving such notice and the validity thereof, are hereby approved and confirmed.

(15) That Honorable Allen E. Walker, Special Master, heretofore appointed herein, be and he is hereby allowed the sum of $2000.00 as reasonable compensation for his services and expenses incurred in and about his duties as such Special Master, which said sum shall be paid by the City's Fiscal Agent, R. E. Crummer & Company, within 15 days from the date hereof.

(16) That this Court hereby expressly retains jurisdiction herein to supervise the consummation of said plan of composition as modified, including among other things, the delivery of the new refunding bonds and the certificates of deposit, and the distribution thereof by the depositary, and for the purpose of entering a final decree herein, together with such injunctional orders as may be necessary to make such plan of composition as modified, fully effective when consummated.

Done and Ordered in Chambers at Jacksonville, Florida, this 19th day of June, A. D. 1939.

(s) ALEXANDER AKERMAN,
U. S. District Judge.

On the 18th day of July, Notice of Appeal was filed by the American United Life Insurance Company
252 and William E. Sweet, and Attorneys for L. W. Rittenoure; copy of said notice being as follows:

253 NOTICE.

In the United States District Court in and for the Southern District of Florida, Tampa Division.

No. 3088-T-Bankruptcy.

In the Matter of: City of Avon Park, Florida, Debtor.

Notice is hereby given that American United Mutual Life Insurance Company, a corporation organized under the Laws of Indiana, William E. Sweet, of Colorado, and L. W. Rittenoure, of Kansas, each a creditor of the Petitioner in this proceeding, hereby jointly and severally appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the Interlocutory Decree entered herein June 19, 1939.

GILES J. PATTERSON,
Attorney for American United Mutual Life Insurance Company and William E. Sweet.
PHILLIPS & THOMPSON,
Attorneys for L. W. Rittenoure.

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254 On July 18, 1939, the Appellants filed their Cost Bond; copy thereof is omitted.

On August 28th, 1939, there was filed Order extending time within which to file the record on appeal; copy of said order being as follows:

255 (Title Omitted.)

This matter coming on, on request of the appellant, for additional time within which to file the record on appeal in said cause with the Circuit Court of Appeals

for the Fifth Circuit, it is hereby ordered that the time for filing said record on appeal and docketing the said action be and the same hereby is extended, and appellant shall file the same with the Clerk of the Circuit Court of Appeals for the Fifth Circuit on or before the 25th day of September, 1939.

Done and Ordered at Jacksonville, Florida, August 27th, 1939.

LOUIE H. STRUM,
Judge.

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256 On the 15th day of September, 1939 Appellants filed Designation of Contents of Record on Appeal, copy of said Designation being in words and form as follows:

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

257 (Title Omitted.)

Come now Appellants and file this their designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal:

The Clerk of the above-styled Court is requested, pursuant to law, to prepare a transcript of record for appeal to the Circuit Court of Appeals for the Fifth Circuit, sitting at the City of New Orleans, in the State of Louisiana, and in the preparation thereof to be governed by the following designation:

1. Recite the date of filing, and copy in full the original petition of the City of Avon Park filed August 15th, 1938, together with Exhibits A, B, C and D1. Recite that consents similar to Exhibit D1 were filed by other creditors as listed in the petition, and were attached thereto.

2. Recite the fact that the Court approved the Plan of Composition and appointed a Special Master by order dated August 15, 1938, filed August 15, 1938, but omit copy of said order.

3. Recite the date of filing, but omit certificate of publication and mailing of notices filed September 23, 1938.

4. Recite date of filing, and copy in full the petition for stay order filed by the City of Avon Park October 8, 1938.

5. Recite date of filing, but omit notice of hearing filed October 7, 1938.

258 6. Recite date of filing, but omit petition of Roger W. Babson to vacate stay order filed October 14, 1938.

7. Recite date of filing, but omit objections and exceptions of Lawrence W. Rittenoure filed October 17, 1938.

8. Recite date of filing, but omit stipulation filed October 22, 1938.

9. Recite date of filing, and copy in full, stay order dated October 17, 1938.

10. Recite date of filing, but omit objection of M. M. Smith, C. C. Smith, and R. O. Smith, filed October 24, 1938.

11. Recite date of filing, and copy in full, motion to dismiss petition and answer of respondent creditor, Lawrence W. Rittenoure filed October 26, 1938.

12. Recite date of filing, and copy in full answer of William E. Sweet and American United Life Insurance Company filed October 26, 1938.

13. Recite date of filing, but omit report of Special Master filed October 31, 1938.

14. Recite date of filing, but omit motion of City of Avon Park filed October 31, 1938.

15. Recite date of filing, but omit order dated October 31, 1938 filed October 31, 1938.

16. Recite date of filing, but omit motion of Roger N. Babson to file amendment filed November 17, 1938.

17. Recite date of filing, and copy in full, amended answer of William E. Sweet and American United Life Insurance Company filed November 21, 1938.

18. Recite date of filing, but omit motion of Lawrence W. Rittenoure for leave to file amended answer, filed November 21, 1938.

19. Recite date of filing, but omit motion of William E. Sweet and American United Life Insurance Company for leave to amend answer filed November 21, 1938.

20. Recite date of filing, and copy in full amendment to answer of Lawrence W. Rittenoure filed November 21, 1938.

21. Recite date of filing, but omit order dated November 21, 1938 granting motion of William E. Sweet and American United Life Insurance Company to file amended answer, filed November 21, 1938.

259 22. Recite date of filing, but omit order granting motion of Lawrence W. Rittenoure for leave to file amended answer, said order being dated November 21, 1938 and filed November 21, 1938.

23. Recite date of filing, but omit petition of City of Avon Park filed November 28, 1938.

24. Recite date of filing, but omit motion of City of Avon Park for extension of time, filed November 30, 1938.

25. Recite date of filing, but omit order dated November 28, 1938, filed November 28, 1938.

26. Recite date of filing, but omit order dated November 30th, 1938, filed November 30, 1938.

27. Recite date of filing, but omit supplemental report of Special Master filed January 3, 1939.

28. Recite date of filing, but omit order of Court dated December 29, 1938, filed December 29, 1938.

29. Recite date of filing, but omit motion of City of Avon Park for extension of time, filed January 3, 1939.

30. Recite date of filing, but omit order extending time, dated February 3, 1939, filed February 3, 1939.

31. Recite date of filing, but omit affidavit of mailing notices filed March 3, 1939.

32. Recite date of filing, but omit motion of William E. Sweet and American United Life Insurance Company filed March 18, 1939.

33. Recite date of filing, and copy in full, petition of City of Avon Park submitting modifications of Plan of Composition, filed February 28, 1939.

34. Recite date of filing, and copy in full, order dated February 28, 1939 permitting filing of modified Plan of Composition, filed February 28, 1939.

35. Recite date of filing, and copy in full, testimony in question and answer form, filed March 31, 1939, but do not include exhibits.

36. Recite date of filing, and copy in full, Special Master's report filed March 31, 1939.

37. Recite date of filing, and copy in full, objections of Roger W. Babson to Master's report, filed April 6, 1939.

38. Recite date of filing, and copy in full, exceptions of American United Life Insurance Company and William E. Sweet to the report of the Special Master, filed April 10, 1939.

260 39. Recite date of filing, but omit notice filed June 19, 1939.

40. Recite date of filing, but omit motion for interlocutory decree confirming Plan of Composition as modified, filed June 19, 1939.

41. Recite date of filing, and copy in full, interlocutory decree dated June 19, 1939, filed June 19, 1939.

42. Recite date of filing, and copy in full, Notice of Appeal.

43. Recite date of filing but omit copy of cost bond.

44. Recite date of filing, and copy in full, Order of Louie W. Strum extending time for filing record on appeal to September 25, 1939.

45. Recite date of filing, and copy in full, this designation.

46. Recite date of filing, and copy in full, Statement of Points on which Appellants intend to Rely on the Appeal.

47. Recite date of filing, and copy in full, order of Louie W. Strum extending time to October 13th to file record and dockets of said cause in the Circuit Court of Appeals.

GILES J. PATTERSON,
Attorney for American United Life Insurance Company and William E. Sweet.
PHILLIPS & THOMPSON,
Attorney for Lawrence W. Rittenoure.

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261 On the 15th day of September, 1939, Appellants filed Statement of Points on which they

intend to rely on the appeal, said statement being in words and form as follows:

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY ON THE APPEAL.

262 (Title Omitted.)

The Appellants intend to rely upon the contention that the United States District Court for the Southern District of Florida, erred:

First.

In entering the interlocutory decree dated June 19, 1939, filed June 19, 1939.

Second.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the first exception of the American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that more than 66-2/3 per cent of the holders of bonds of the City have consented to the granting of the petition, because testimony affirmatively shows that a large portion of the bonds that purported to consent were owned by the fiscal agent of the City, which purchased them after it had become fiscal agent."

263 Third.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the second exception of

American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in permitting the fiscal agent and its affiliated corporation, the Brown-Crummer Investment Company, to file a proof of claim upon bonds and coupons which, by the record, are shown to have been mutilated and destroyed when judgment was obtained upon them in the State or Federal Court."

Fourth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the third exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the testimony of the City and its fiscal agent affirmatively shows that the plan is fair and equitable, because it is admitted that the City cannot pay the total indebtedness represented by the face value of the refunding bonds, except by the manipulation of the market price of the same by the City and its fiscal agents."

Fifth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the sixth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the plan is fair and equitable, for it does not provide the amount of compensa-

tion to be awarded to the fiscal agent for its services and expenses, nor has that amount been fixed by the Court, as provided by law."

264 Sixth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the seventh exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"In recommending that the plan of composition be approved, the Master erred, because the plan provides that refunding bonds representing interest coupons will not be issued for a period of two years, and, under the statute, consideration for the composition must be delivered to the Court and distributed among the creditors."

Seventh.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the tenth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding the plan fair and equitable, because the refunding plan does not authorize the fiscal agent to purchase obligations of the City for its own profit after it became agent, and neither the plan nor the petition disclosed that the fiscal agent was the principal creditor, the amount of bonds which had been purchased, nor the price or prices at which it acquired its bonds, nor when it acquired them, nor that the coupons owned were acquired by it without cost."

Eighth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the eleventh exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

265 "The Master erred in holding that the City was acting in good faith, because it appears from the uncontradicted evidence that the fiscal agent purchased judgments against the City to prevent the holders from objecting to the plan, and the City made a special tax levy for the benefit of the fiscal agent, and, at the same time, deliberately ignored the peremptory writs which had been issued by this Court in favor of these creditors."

Ninth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the eighteenth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in finding that the composition was for either the best interests of the City or of the creditors, because the undisputed testimony shows that the City will be unable to pay the refunding bonds at their face value, and that the increased amount of bonds to be issued by the City, due to refunding at par of the bonds and coupons purchased by the fiscal agent at greatly reduced prices, will offset the saving of interest which would otherwise accrue to the City for the reduced rate provided on the refunding bonds."

Tenth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the nineteenth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the City has power to carry out the plan of composition, because it has no power to bind itself to carry out the plan for the settlement of coupons."

266 Eleventh.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the twenty second exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the plan conforms to the requirements of the statute, because it appears that some of the bonds now outstanding were secured by the pledge of special assessment liens, and each of these issues constitute a class, and it does not appear that the City has the consent of two-thirds of each of said issues."

GILES J. PATTERSON,
PHILLIPS & THOMPSON,
Attorney for Appellants.

267 State of Florida,
County of Duval. ss.

Personally appeared before me, John W. Donahoo, who first being duly sworn, deposes and says that he is attorney at law associated with Giles J. Patterson, that he served the foregoing attached Designation of Contents of Record

on Appeal upon Robert J. Pleus, Attorney at Law, First National Bank Building, Orlando, Florida, and T. A. McNicholas, Attorney at Law, Avon Park, Florida, as attorneys for the City of Avon Park, Florida, by mailing copy of the described paper to the respective above named attorneys, by depositing the same in a sealed envelope addressed to the said attorneys with sufficient postage thereon to insure their arrival at the address, and depositing said sealed envelope in the United States Mail Chute in the Florida National Bank Building, Jacksonville, Florida, at 5:15 P. M. on the 14th day of September, 1939.

(Sgd.) JOHN W. DONAHOO.

Sworn to and subscribed before me this 14 day of September, A. D. 1939.

M. L. TULLIS.

My Commission expires 9/15/40.

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268 On the 14th day of September, 1939, Order was filed extending time to October 10th within which to file the record on appeal, said order being in word and form as follows:

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL.

269 (Title Omitted.)

This cause coming on on request of the appellant for additional time within which to file the record for appeal in said cause with the Circuit Court of Appeals for the Fifth Circuit, and it appearing from the record in this

cause that Notice of Appeal was filed in this cause on July 18, 1939, and that this Court has heretofore extended time for filing of said record to September 25, 1939, and the Court being advised that preparation of the record cannot be completed by said date of September 25, 1939.

It is Thereupon Ordered, Adjudged and Decreed that the time for filing said record on Appeal and docketing of said action be and the same is hereby extended, and the appellant shall have to and including the 10th day of October, 1939, within which to file the record on appeal and docket said action.

Done and Ordered at Jacksonville this 14th day of September, 1939.

LOUIE W. STRUM,
United States District Judge.

270 United States of America,
Southern District of Florida.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the above and foregoing typewritten pages numbered One to Two Hundred and Sixty-nine (269) are a full, true and correct copy of the proceedings had in the matter of City of Avon Park, Florida, Debtor, prepared in accordance with the directions filed by the attorneys for the respective parties hereto, of the originals as the same appears in the files and records of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Tampa, Florida, this 19th day of September, A. D. 1939.

EDWIN R. WILLIAMS, Clerk,

(Seal) By NETTIE TIDWELL,
Deputy Clerk.

[fol. 267] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 23rd, 1940

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors,

versus

CITY OF AVON PARK, FLORIDA, Debtor

On this day this cause was called, and, after argument by Robert J. Pleus, Esq., for appellee, was submitted to the Court.

[fol. 268] OPINION OF THE COURT—Filed January 31, 1940

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors, Appellants,

versus

CITY OF AVON PARK, FLORIDA, Debtor, Appellee

Appeal from the District Court of the United States for the Southern District of Florida

(January 31, 1940)

Before Hutcheson, Holmes and McCord, Circuit Judges

Per CURIAM:

There being no substantial distinction between this case and that presented in Vallette vs. City of Vero Beach, 104 [fol. 269] Fed. (2d) 59, the order appealed from is affirmed, upon the authority of that case.

Affirmed.

[fol. 270] JUDGMENT

Extract from the Minutes of January 31, 1940

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors,

versus

CITY OF AVON PARK, FLORIDA, Debtor

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, American United Mutual Life Insurance Company, and others, Creditors, and the surety or sureties on the appeal bond herein, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 271] IN THE UNITED STATES CIRCUIT COURT OF APPEALS OF THE FIFTH CIRCUIT

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors, Appellants,

vs.

CITY OF AVON PARK, Debtor, Appellee

Motion of Appellants for Order Staying Mandate of the Circuit Court of Appeals

To the Honorable Judges of said Court:

Petitioners respectfully present this, their application for an Order staying the issuance of the mandate by the Circuit

Court of Appeals, Fifth Circuit, as provided by Section 350, Title 28, of the U. S. C. A., and in support thereof, show the following:

1. Appellants are now preparing and will file within a few days a petition with the Supreme Court of the United States praying for the issuance of a writ of certiorari to review the opinion and decision of this Court in the above entitled cause entered herein on the 31st day of January, 1940 and Appellants will forthwith instruct the Clerk to prepare the necessary record for submission to the Supreme Court of the United States with such petition.

Respectfully submitted, (Signed) Giles J. Patterson, Attorney for Appellants, American United Life Insurance Company and William E. Sweet.

[fol. 272] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors, Appellants,

versus

CITY OF AVON PARK, FLORIDA, Debtor, Appellee

On consideration of the application of the appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expira-

tion of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 15th day of February, 1940.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 273] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 267 to 272 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9294, wherein American United Mutual Life Insurance Company, et al., Creditors, are appellants, and City of Avon Park, Florida, Debtor, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 266 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 15th day of February, A. D. 1940.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 274] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.